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

FILED/ACCEPTED

JUN 27 2013

Federal Communications Commission
Office of the Secretary

In re: Application of:

COMMUNITY BROADCASTING, INC.)
Station KCVW(FM), Kingman, Kansas) File No. BPED-20111214ABT
Facility ID No. 6506

For Minor Changes

To: The Office of the Secretary
Forward to: Chief, Audio Division, Media Bureau

PETITION FOR RECONSIDERATION

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Dated: June 27, 2013

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PETITION FOR RECONSIDERATION

Entercom Wichita License, LLC ("Entercom"), licensee of station KDGS(FM), Andover, Kansas (Facility ID No. 70266) ("KDGS"), pursuant to the Commission's rules, hereby seeks reconsideration of the Media Bureau's recent approval of the above-referenced application ("Application") filed by Community Broadcasting, Inc. ("Community"), licensee of station KCVW(FM), Kingman, Kansas, to modify KCVW(FM)'s facilities, which requires a modification of KDGS's license to specify operation on Channel 228C3 instead of 230C3.

SUMMARY OF ARGUMENT

Entercom filed two Informal Objections to Community's Application, one with regard to the initial Application (which the Media Bureau considered to be deficient because of the failure to meet the minimum coverage standards of Section 73.315 of the Commission's Rules) and the second after Community proposed a different transmitter site, which Entercom demonstrated also fails to meet the minimum coverage requirements. By letter dated May 28, 2013 ("Letter Decision"), the Media Bureau denied Entercom's objections to the Application based on an undisclosed independent study performed by "the propagation expert at the Office of

Engineering and Technology ["OET"],” Letter Decision at 2, granted the Application, and ordered KDGS to change channels.

Entercom submits that the Media Bureau’s decision is in error and should be reversed. In granting the Application, the Media Bureau appears to have accepted Community’s use of Point-to-Point methodology (“PTP”) – which was the *only* engineering study submitted to show compliance with the minimum coverage requirement of Section 73.315 – or perhaps OET used its own PTP study.¹ In either case, reliance upon the PTP methodology would be clear error, because the Commission specifically deferred any use of the technique until refinements were made to make the methodology more accurate. *Streamlining of Radio Technical Rules*, 15 FCC Rcd 21649, 21652-53 (Comm. 2000). In more than a dozen years since, the Commission has not taken any action to authorize the use of PTP. The Media Bureau has no authority to rely on this methodology unless, and until, the Commission says it may.

However the OET study was conducted, it was entirely at odds with OET’s review of the *initial* Community proposal, in which an independent study by OET concluded that the minimum coverage requirements of Section 73.315 were not satisfied. Community’s revised proposal provided a slight improvement in 70 dBu service to Kingman over what was originally proposed, but a Longley-Rice study for the new proposal provided by Entercom again showed clear, sub-standard coverage, both in the terms of the number of people served and the area covered, well below the 80% minimum coverage required under the rules. The Media Bureau failed to provide any details of the two OET engineering studies, which reached opposite conclusions, nor did the Letter Decision provide any assessment refuting Entercom’s consulting engineer’s Longley-Rice

¹ Because the Letter Decision rests on the OET study, but does not provide any information about its finding other than the bare conclusion that there “there is no major terrain obstruction and the application, as amended, demonstrates compliance with 47 C.F.R. §73.315”, Entercom has no information at all to understand how OET reached this critical conclusion.

study demonstrating that the amended KCVW proposal would provide coverage far below the required minimum level deemed to be "substantial compliance" for purposes of Section 73.315. These shortcomings, and the absence of anything beyond the unsubstantiated conclusion that the Application satisfies the requirements of Section 73.315, renders the Letter Decision arbitrary and capricious. In recent years, the Media Bureau has abandoned its former policy of providing detailed reasoning of OET's analyses in its decisions; this leaves interested parties to "guess" at how the determination of compliance (or non-compliance) is reached, and, in particular, when and which alternative coverage methodologies would be accepted by the Commission. Entercom submits that this practice represents a violation of due process and the Administrative Procedures Act.

Based upon these errors, the Media Bureau must reconsider the Letter Decision, deny Community's Application, and reverse the change of channel ordered for KDGS.

BACKGROUND

On December 14, 2011, Community filed the Application to propose to operate KCVW on Channel 232C1 from a new transmitter site 31 kilometers from Wichita. The proposal would create a 50 kilometer short-spacing to KDGS, operating on a second-adjacent channel. The Application requested that the Commission issue Entercom an Order to Show Cause that would compel KDGS to move to Channel 228C3.²

On February 3, 2012, Entercom filed an Informal Objection to the Application, demonstrating that the proposal violates Section 73.315 of the Commission's rules, which requires applicants to specify an antenna location that provides a minimum field strength of 70

² The Application also requested an additional Order to Show Cause to Niemeyer Communications, LLC for station KOTE, Channel 228A at Eureka, Kansas, which would be forced to change to Channel 230A.

dBu over the entire principal community to be served.³ It is longstanding Commission policy that coverage of at least 80% of the area or population is the minimum level necessary for "substantial compliance" with Section 73.315(a) of the Commission's rules.⁴ The Application relied on Longley-Rice median occurrence and PTP methodologies, two alternate contour methodologies used to predict 70 dBu service coverage, because the standard 70 dBu contour from the proposed KCVW facility (as calculated according to the procedures set forth in Section 73.313 of the Commission's rules) would not have encompassed any portion of Kingman, Kansas, the station's community of license. Entercom based its Informal Objection on an engineering assessment prepared by Hatfield & Dawson Consulting Engineers ("H&D"), which concluded that Community's proposal did not provide sufficient coverage to Kingman due to local terrain obstructions outside of Kingman.⁵ H&D employed the Longley-Rice point-to-point methodology to evaluate the KCVW proposal because the methodologies used by Community did not take into account local terrain obstructions.⁶ The results of the H&D study showed that the proposed coverage was well below the required 80% coverage deemed appropriate for "substantial compliance" of §73.315(a) of the Commission's Rules.⁷

On February 14, 2012, Community filed an Opposition to Entercom's Informal Objection merely disputing the contour methodology employed by H&D, but not refuting the result of the

³ 47 C.F.R. §73.315(a).

⁴ *In the Matter of Amendments of Parts 73 and 74 of the Commission's rules to Permit Certain Minor Changes in Broadcast Facilities without a Construction Permit*, 12 FCC Rcd 12371, 12739 [¶11] (1997); see *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations*, 15 FCC Rcd 3322, 3327 [¶13] (2000); and see also *Amendment of the Commission's Rules to Permit FM Channel and Class Modification by Application*, 8 FCC Rcd 4735 (1993).

⁵ See Informal Objection filed by Licensee on February 3, 2012, to which was attached an Engineering Statement from H&D, dated January 31, 2012.

⁶ *Id.* at pages 3-9 in Engineering Statement.

⁷ *Id.*

H&D study.⁸ On February 23, 2012, Entercom filed a Reply, emphasizing that the methodology used by H&D is appropriate in this circumstance because it takes into account the effect of terrain obstructions immediately outside of Kingman.⁹

On July 26, 2012, the Commission sent a Deficiency Letter to Community, stating that the supplemental engineering showing filed with the Application was forwarded to the Media Bureau's propagation expert at OET to perform an independent study.¹⁰ That study concluded that the Application would cover less than 80% of Kingman, Kansas.¹¹ This determination agreed with Entercom's analysis of, and objection to, the Application.

On September 11, 2013, Community filed an amendment to the Application to specify changes to the proposed transmitter site location, antenna height, tower height, and ERP. The amended Application relied exclusively on PTP methodology in a renewed attempt to establish compliance with the community of license coverage requirement of Section 73.315.

On September 17, 2012, Entercom submitted a supplement to its Informal Objection, supported by a second Engineering Statement from H&D which analyzed the amended technical proposal of the Application using the Longley-Rice methodology.¹² With respect to population coverage, H&D concluded that the proposed KCVW facility would provide a 75 dBu signal (effectively a 70 dBu signal with when a 5 dB clutter loss is applied) to only 6.6% of the population of Kingman (207 of 3,177 persons); a 73 dBu signal (effectively a 70 dBu signal with

⁸ See Community Opposition to Entercom's Informal Objection filed February 14, 2012 at pages 1-3.

⁹ See Entercom Reply to Community's Opposition filed February 23, 2012 at pages 1-2.

¹⁰ See letter dated July 26, 2012, signed by Edna V. Prado, Supervisory Engineer, Audio Division, Media Bureau ("Deficiency Letter").

¹¹ *Id.*

¹² See Supplement to Informal Objection, filed by Entercom on September 17, 2012, to which is attached an Engineering Statement from H&D, dated September 14, 2012 ("Entercom's Second Engineering Statement").

when a 3 dB clutter loss is applied (the same clutter loss used by Community) to only 12.4% of the population Kingman (393 of 3,177); and a 70 dBu signal (when assuming no clutter loss) to only 36.6% of the population of Kingman (1,162 of 3,177 persons).¹³ With respect to area coverage, H&D found that the proposed KCVW facility would provide an effective 70 dBu signal to only: (i) 30.8% of the area of Kingman (2.8 of 9.1 sq km) (using a clutter loss of 5%); (ii) 36.3% of the area Kingman (3.3 of 9.1 sq km) (using a clutter loss of 3%); and (iii) 65.9% of the area of Kingman (using no clutter loss).¹⁴ This data revealed that the proposed amended facility still fell far short of the 80% coverage level required for substantial compliance with Section 73.315.

On February 19, 2013, the Media Bureau issued to Entercom an Order to Show Cause why the license for KDGS should not be modified to specify Channel 228C3 in lieu of Channel 230C3 in response to the filing of the Application, as amended.¹⁵ On March 20, 2013, Entercom filed a Response to the Order reiterating that the Application does not comply with Section 73.315 of the Commission's Rules, and that PTP methodology is not an appropriate methodology.¹⁶

On May 28, 2013, the Media Bureau issued the Letter Decision denying Entercom's objections, granting the Application, and ordering KDGS to specify operation on Channel 228C3

¹³ Entercom's Second Engineering Statement at pages 5-10.

¹⁴ *Id.* at pages 6-10.

¹⁵ See Order to Show Cause letter dated February 19, 2013 issued by Edna V. Prado, Supervisory Engineer, Audio Division, Media Bureau.

¹⁶ Entercom also submitted that changing KDGS's channel will not serve the public interest because a channel change to KDGS, the only radio station in Wichita, Kansas focused on serving an African-American audience, will inevitably cause confusion that will disrupt its audience because the station's frequency is inherent to the station's identity as "Power 93.9". Entercom does not waive the other issues raised in its previous pleadings in the matter, but does not wish to repeat them in this Petition for Reconsideration.

in lieu of Channel 230C3.¹⁷ The Letter Decision repeated, but did not specifically address, Entercom's arguments about the deficiencies in coverage of Kingman from the amended site; did not disclaim the possible acceptance by OET of Community's use of PTP methodology, even though the Commission has never authorized the use of this signal prediction methodology; and failed to articulate any reasoning to support the ultimate conclusion that the amended Application meets the minimum coverage standards of Section 73.315. The Letter Decision rests entirely on the following statement:

We referred the application to our propagation expert at the Office of Engineering and Technology ("OET") to perform an independent study. The evaluation confirmed that there is no major terrain obstruction and the application, as amended, demonstrates compliance with 47 C.F.R. § 73.315. Furthermore, our engineering review of the application, as amended, reveals that CBI's application demonstrates compliance with all necessary rules.¹⁸

The Media Bureau provided no details and no reasoning for this statement. Entercom submits that the Media Bureau erred to the extent that it either accepted (or applied on its own) unapproved PTP methodology offered by Community as the only technical showing in support of the Application; the Letter Decision was arbitrary and capricious because it was entirely inconsistent with its previous determination in the Deficiency Letter; and the Media Bureau's standards for acceptance of alternative showings under Section 73.313(e) are vague and in violation of the due process standards of the Administrative Procedures Act since parties do not know what is required of them due to a distinct lack of transparency. As a consequence, the Media Bureau's decision must be reconsidered and reversed.

¹⁷ See Letter Decision at page 2.

¹⁸ *Id.*

DISCUSSION

I. The Media Bureau's Decision to Accept and Grant an Application Relying Upon an Engineering Study Using PTP Methodology as its Only Supplemental Showing of Community of License Coverage Was in Error.

The Media Bureau's decision in this matter was in error as a threshold matter because the amended Application was unacceptable for filing since it included a supplemental showing based solely and entirely on a technical showing using the PTP methodology – an approach that has not been formally adopted by the full Commission for any purpose and is therefore inappropriate to use in a situation like this instant matter.¹⁹

The Media Bureau accepts a variety of supplemental methods, “such as NBS Technical Note 101, terrain roughness, or Longley-Rice analyses, in circumstances where applicants who are faced with unusual terrain considerations, to demonstrate that the principal community contour will encompass the community of license or main studio location, where they were not able to establish compliance through the standard predicted contour prediction methodology prescribed under Section 73.313 of the Commission's rules.”²⁰ The Commission has declined to establish a standard or preferred method for supplemental coverage analysis “[b]ecause the exhibits provided with supplemental showings may vary from method to method...”²¹ But the Commission should not accept for filing an application that relies upon a supplemental methodology that has not been approved by the Commission.²² As raised in Entercom's Second

¹⁹ *In the Matter of 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 15 FCC Rcd 21649, 21652 (“1998 Biennial Regulatory Review”).

²⁰ *Amendments of Parts 73 and 74 of the Commission's Rules to Permit Certain Minor Changes in Broadcast Facilities without a Construction Permit, Report and Order*, 12 FCC Rcd 12371, 12401-03 (1997) (citing, for FM stations, 47 C.F.R. §§ 73.333 and 73.313(e)) (TV citations omitted) (subsequent history omitted).

²¹ *Id.*

²² Biennial Regulatory Review at 21652-21653.

Engineering Statement, PTP methodology was proposed in MM Docket 98-93 as a means to calculate contours in certain circumstances.²³ A number of commenters to that proceeding raised concerns regarding the accuracy and reliability of PTP methodology.²⁴ The full Commission concluded that adoption of the proposed PTP methodology was to be deferred “on the basis of comments raising issues regarding the accuracy and reliability of the proposed signal propagation prediction model.”²⁵ In 2000, the Commission stated its intention to revise the PTP methodology and to seek further comment on its use.²⁶ Until that further rulemaking is completed, the use of the PTP methodology has been deferred.²⁷ In 2004, the full Commission again noted that it deferred the adoption of PTP methodology “on the basis of comments raising issues regarding the accuracy and reliability of the proposed signal propagation prediction model.”²⁸ The Media Bureau has previously acknowledged the Commission’s deferral of adoption of the PTP methodology as “the Commission ... was considering extensive revisions to the [PTP] model” and observed that “[t]he [PTP] model has not been approved by the Commission as a means of estimating FM station interference contours.”²⁹ In another instance, the Media Bureau correctly declined to apply PTP methodology to determine compliance with the minimum coverage requirements of Section 73.315 in an FM allotment case, holding it

²³ *Id.*; see also Entercom’s Second Engineering Statement at page 3.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Michael Radio Group*, 19 FCC Rcd 23817, 23820, n. 16 (Commission 2004). ²⁸

²⁸ *Id.*, see also Entercom’s Second Engineering Statement at page 3.

²⁹ *Calvary Chapel of Costa Mesa, Inc.*, 23 FCC Rcd. 9971, 9975, n. 30 (Media Bureau 2008).

"inappropriate for the staff to ... implement[] a supplemental point-to-point propagation methodology while the issue is being considered by the Commission."³⁰

The Media Bureau should have acted in accordance with these prior cases and refused to review, much less approve, the PTP showing submitted with the amended Application. The Application has always depended on a supplemental propagation showing because the standard prediction method prescribed by Section 73.313 clearly fails to show sufficient service. Without a valid supplemental showing, Community cannot establish compliance with the requirements of Section 73.315. It has been more than twelve years since the Commission set aside its consideration of the PTP methodology and there has been no further Commission action addressing the use of this methodology.³¹ The Letter Decision states that OET's evaluation "confirmed that ... the application, as amended, demonstrates compliance with 47 C.F.R. Section 73.315."³² The *only* supplemental showing supporting Community's amended proposal was a study employing the PTP methodology, which cannot be relied on at this point without Commission approval. If the PTP study cannot be utilized, then there is no basis for the ultimate conclusion that the Application is grantable.

Even if PTP was an approved method for use in conducting a supplemental community of license coverage showing, PTP fails to take into account the local terrain obstructions outside of Kingman, Kansas. This flaw was one of the concerns commenters raised in in MM Docket 98-93, in which the adoption of this methodology was deferred.³³ Operation from the amended site

³⁰ *In re Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Taccoa, Sugar Hill, and Lawrenceville Georgia)*, 16 FCC Rcd 21191, 21192 (Mass Media Bureau, 2001) ("Taccoa, Georgia").

³¹ Entercom's Second Engineering Statement at page 3.

³² Letter Decision page 2.

³³ See Entercom's Second Engineering Statement at page 4.

is predicted to provide substandard service to the community of license because the terrain immediately adjacent to Kingman results in shadowing of the community and attenuation of the received signal within the community.³⁴ H&D's Longley-Rice analysis using a 5 dBu clutter loss, a 3 dBu clutter loss and even *no clutter loss* shows that the facility operating from the site proposed in the amended Application falls far below the minimum 80% community coverage threshold.³⁵ Attached as Exhibit A is an engineering statement from registered professional engineer, Benjamin F. Dawson III P.E. of H&D ("Dawson Statement"). Mr. Dawson states that the Longley-Rice study conducted by his colleague, Erik Swanson P.E., with respect to the amended proposal for KCVW showed substandard coverage and that there are "indeed significant obstructions near the city of Kingman which would result in reduced signal intensity by diffraction or attenuation of line-of-sight free-space circumstances."³⁶ The Letter Decision fails to address the specific results of the Longley-Rice study submitted in Entercom's Second Engineering Statement, which noted significant deficiencies from diffraction losses. The Media Bureau's statement that OET found "no major terrain obstruction" is a mere conclusion, not a justification for grant, especially when there is no valid supplemental showing submitted by Community. Whether the Letter Decision was in error for failing to reject the amendment as a threshold matter for offering a showing premised upon a supplemental methodology that has not been approved for use for this purpose, or because the showing fails to adequately measure the effect of the terrain obstructions within the community of license, as predicted by the Longley-Rice study submitted by H&D, the Media Bureau acted in error and its decision must be reversed.

³⁴ *Id.* at page 6.

³⁵ *Id.* at pages 5-6.

³⁶ See Dawson Statement.

II. The Media Bureau's Decision is Arbitrary and Capricious and Inconsistent with its Previous Determination.

The Media Bureau and the Commission are bound by the provisions of the Administrative Procedure Act (the "APA"). In particular, Section 706(a)(2) of the APA, 5 U.S.C. §706(a)(2), advises reviewing courts to "hold unlawful and set aside agency action, findings, and conclusions found to be...arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

The conclusion in the Media Bureau's Letter Decision is inconsistent with the conclusion of the Deficiency Letter. In the Deficiency Letter, the Commission rejected Community's proposal because the OET found that it would cover less than 80 percent of Kingman.³⁷ In its September 11, 2012 amendment, Community nominally improved its 70 dBu service to Kingman over what was originally proposed, but as addressed in Entercom's Second Engineering Statement, the new proposal, "still falls short of the required service level owing to local terrain obstruction which exist just outside the city boundaries."³⁸ As Mr. Dawson concluded in his statement, the second Longley-Rice study submitted in Entercom's Second Engineering Statement found deficiencies from diffraction losses.³⁹ The Media Bureau had available to it in Entercom's Second Engineering Statement the results of this Longley-Rice study conducted by H&D, which clearly shows that predicted coverage within Kingman is far less than required by Section 73.315. Instead, the Media Bureau apparently accepted and reviewed Community's supplemental PTP showing, which was in itself error (as discussed above), and concluded, without explanation, that the Application now complied with Section 73.315. For the Media Bureau to determine that there is no major terrain obstruction in the

³⁷ See Deficiency Letter.

³⁸ Entercom's Second Engineering Statement at page 3.

³⁹ See Dawson Statement.

amended KCVW proposal, without explanation other than the cursory statement that the OET determined there was none, is in error and inconsistent with its prior determination in the Deficiency Letter. The Media Bureau's decision to grant the Application by stating a mere conclusion that does not provided an explanation is arbitrary and capricious and must be reconsidered and reversed.

III. The Media Bureau's Application of Section 73.313(e) of the Commission's Rules is Vague and Violates Due Process.

Regulated parties should not be left to guess how a regulation will be applied to them. It is essential to due process of the law that regulatory bodies provide fair notice of what conduct is forbidden or required.⁴⁰ The void for vagueness doctrine addresses the following two fundamental principles: (i) regulated parties should know what is required of them so they know how to act; and (ii) laws must have precise standards so those who are charged with enforcing them will be prevented from acting arbitrarily.⁴¹ As stated in *Fox*, "an agency, in the ordinary course, should acknowledge that it is in fact changing its position and 'show that there are good reasons for the new policy.'"⁴² In MM Docket 96-58, the Commission attempted to clarify its policy on supplemental showings.⁴³ However, it failed to meet its obligations in providing only nominal guidance on when a supplemental showing is appropriate and what an applicant needs to

⁴⁰ *FCC v. Fox Television Stations*, 132 S. Ct. 2307 at 2317 (2012) (citing *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926)) ("*Fox*").

⁴¹ *Id.* (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972)).

⁴² *Id.* at 2315-2316 (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 529, 129 S.Ct. 1800, 1811 (2009)).

⁴³ *Amendments of Parts 73 and 74 of the Commission's Rules to Permit Certain Minor Changes in Broadcast Facilities without a Construction Permit, Report and Order*, 12 FCC Rcd 12371, 12401-03 (1997) (citing, for FM stations, 47 C.F.R. §§ 73.333 and 73.313(e)) (TV citations omitted) (subsequent history omitted).

include in a supplemental showing to prove why a supplemental showing is justified.⁴⁴ The Commission admitted that supplemental showings are open to varying interpretations and are controversial, but the Commission left applicants at a disadvantage by specifically declining to provide any other standards or guidance because “the exhibits provided with supplemental showings may vary from method to method...”.⁴⁵ The Commission used to have a longstanding policy to provide the parties in a proceeding a detailed explanation of OET’s independent analysis with OET’s Report, Memo and OET Map.⁴⁶ In *CMP Houston*, a matter in which Entercom’s parent company, Entercom Communications Corp., objected to the Commission’s acceptance of a supplemental showing, the Commission at least provided a copy of the report of the OET engineer and the map showing the calculated 70 dBu contour.⁴⁷ In fact, the Commission found that the Media Bureau provided a sufficient basis for its decision by providing this information.⁴⁸ This policy at least provided parties guidance on how OET made its determination based on supplemental showings. This policy has clearly been abandoned, at least in this instance, as the Media Bureau provided no basis or explanation for its conclusion that the Application as amended complied with Section 73.315 of the Commission’s rules, and supplied none of the supporting documentation from OET justifying its findings.⁴⁹ As a result, Entercom has no way of knowing the basis for the determination that was made. Not only does this decision affect Entercom, this decision affects all future parties attempting to make a

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See, e.g., *In the Matter of CMP Houston-KC, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 10656, 10660 (2008) (“CMP Houston”).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Entercom tried unsuccessfully to retrieve such documentation by sending a researcher to review the publicly available license and engineering files in the Commission’s reference room. OET’s memo, report and map in this matter could not be located.


supplemental showing under Section 73.313(e). By changing its policies in these situations, the Commission lacks all transparency in its decision-making, turning supplemental showings into a "guessing game" for applicants. This is not how regulatory agency should operate, nor should their regulated parties have to divine on their own how to comply with baseline regulations and qualifications for operation. There should be a clear "bright line" test. The Commission has the duty to provide clear standards and provide notice when it changes its policies and has failed to do so here. To remedy this, the Media Bureau's decision must be reconsidered.

CONCLUSION

For all of the foregoing reasons, the Media Bureau's decision to grant the Application and to require modification KDGS's license was in error, a violation of the APA and due process. The Media Bureau should never have reviewed and accepted a supplemental methodology that has not been adopted by the Commission, one that has been questioned as to its reliability, especially in cases with terrain similar to that in this instance. Such action is erroneous and must be reconsidered and reversed. Also, the Commission cannot provide inconsistent determinations without providing any basis or reasoning for its ultimate conclusions. That is a pure violation of the APA. Finally, the Commission also needs to set clear standards for its application of 73.313(e) by providing parties detailed reasoning for its determination by providing OET's analysis—not just its conclusion—in its decisions. The Commission once had a policy of providing OET's memos, reports and maps within its decisions. It has apparently abandoned that policy without any notice or explanation. This policy change is a violation of due process and will leave future applicants with no set standards for submitting a supplemental community of license coverage showing. Accordingly, the Media Bureau must reconsider its

actions in this matter and dismiss Community's Application and leave KDGS's license intact specifying Channel 230C3.

Respectfully submitted,

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June 27, 2013

CERTIFICATE OF SERVICE


I, Deborah Morris, an assistant at the law firm of Lerman Senter PLLC, do hereby certify that on June 27, 2013 that a true copy of Entercom Wichita License, LLC's Petition for Reconsideration was sent via United States First Class Mail, postage prepaid, to the following:

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