

JUL 16 2012

Before the
 FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

In re Application of)	
)	
HATFIELD McCOY)	
COMMUNICATIONS, INC.)	BPH-20120604AAI
)	Facility ID No. 67039
)	
Minor Modification of Station License)	
Station WVKM (FM), Matewan, West Virginia)	

To: Office of the Secretary
 Attn: Audio Division, Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Hatfield McCoy Communications, Inc. (“Hatfield McCoy”), licensee of FM Station WVKM, Matewan, West Virginia, by its attorney, hereby submits its Opposition to the Petition for Reconsideration¹ filed by East Kentucky Broadcasting Corporation (“East Kentucky”). The East Kentucky pleading is both procedurally and substantively defective and should be dismissed or denied. In support of its position, Hatfield McCoy submits the following:

Hatfield McCoy’s minor change application for WVKM was granted on June 22, 2012. East Kentucky’s sole argument objecting to that grant is that the WVKM antenna center of radiation is allegedly blocked from the station’s community of license by major terrain obstructions. East Kentucky claims that there is a lack of line-of-sight between the WVKM transmitting antenna and Matewan, the WVKM community of license, which results in that community not receiving a 70dBu signal in violation of the Commission’s rules.

¹ East Kentucky labels its pleading an “Informal Objection,” however, because East Kentucky filed its protest after grant of the WVKM application on June 22, 2012, the Commission has treated the East Kentucky pleading as a “Petition for Reconsideration” in CDBS Public Access.

Initially, the East Kentucky Petition for Reconsideration is procedurally inadequate since it violates Section 1.106(c) of the Commission's rules. Little wonder that East Kentucky sought to have its post-grant Petition considered as an Informal Objection, knowing that its filing failed to comply with the Commission's procedural rules. Under Section 1.106(c), a petition for reconsideration relying on facts not previously presented to the Commission or the designated authority may not be granted unless it relies on facts relating to events which have occurred or circumstances which have changed since the last opportunity to present such matters, relies on facts unknown to the petitioner until the last opportunity to present such matters or consideration of the facts relied upon is required in the public interest.

Commission policy, as reflected by Section 1.106, encourages parties to provide complete information at an early stage of a case, thereby minimizing the need for reconsideration proceedings. The Commission's process operates inefficiently at best when, as in this case, facts are presented for the first time post-grant. Over seventy years ago, the Court in *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941) made this abundantly clear when it stated:

“We cannot allow the [petitioner] to sit back and hope that a decision will be in favor, and then when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure was allowed.”

Here, East Kentucky offers no public interest justification for FCC post-grant consideration of its newly presented facts. The FCC's “ ‘strict limitation on reconsideration based on new evidence is intended to promote orderly adjudicated processes and administrative finality. These important public interests should not be sacrificed to consider additional evidence which seeks only to offset the party's oversight or lack of diligence in adducing evidence’ in the

initial stages of the application process.” *Carolyn S. Hagedorn*, 11 FCC Rcd at 1695, 1696 (1996), quoting *Payne of Virginia, Inc.*, 66 FCC 2d 633, 637 (1977).

East Kentucky’s failure to meet the requirements of Section 1.106(c) of the Commission’s rules is fatal to its cause. As such, its Petition for Reconsideration is subject to dismissal. As the Court has previously noted:

“Congress clearly recognized that sound regulation has procedural as well as substantive elements, and that the public interest, convenience and necessity comprehends both. Orderliness, expedition, and finality in the adjudicating process are appropriate weights in the scale, as reflecting a public policy which has authentic claims of its own.”

Valley Telecasting Co., Inc. v. FCC, 336 F.2d 914, 917 (D.C.Cir 1964).

Moreover, even considering the East Kentucky Petition for Reconsideration on its substantive merits, it fails to make a case. It argues that the WVKM application violates Sections 73.315(a) and 73.315(b) of the FCC’s rules. Section 73.315(a) requires that a transmitter location for a station be chosen so that “a minimum field strength of 70dBu or 3.16 mV/m is provided over the entire principal community to be served.” Section 73.315(b) states, in pertinent part, that “the location of the antenna should be so chosen that line-of-sight can be obtained from the antenna over the principal city...to be served [and] in no event should their be a major obstruction in this path.”

However, Section 73.315 of the rules does not impose an absolute requirement for line-of-sight over an applicant’s entire principal community. See *Rush County Broadcasting Co., Inc.*, 26 FCC 2d 480 (1970). See also *Rosamond Radio, Inc.*, 7 FCC Rcd 3609 (1992); *Helen Broadcasters, Inc.*, 5 FCC Rcd 5642 (1990); *The Servant Management Group, Inc.*, 5 FCC Rcd 2023 (1990). The Commission has held repeatedly that terrain obstructions do not necessarily

result in inadequate city-grade coverage, and that the failure to provide line-of-sight signal coverage does not necessarily imply deficient coverage. *See Helen Broadcasters, supra*, 5 FCC Rcd at 5642. In *Jesse Willard Shirley*, 36 FCC 2d 127 (1972), the Commission concluded that there was no violation of Section 73.315(b) where the city to be served was covered by a 70dBu contour despite the fact that several hills (the highest one being 150 feet above the line-of-sight) obstructed the line-of-sight into the city. Accordingly, East Kentucky's conclusion that WVKM's city-grade coverage will be inadequate because of a terrain obstruction is contrary to binding Commission precedent and is simply incorrect.

The Commission has repeatedly rejected Petitions to Deny or Informal Objections claiming violations of Section 73.315 based on the petitioners submission of terrain profile graphs, such as East Kentucky has. *See Idaho Broadcasting Consortium, Inc.*, 11 FCC Rcd 5264 (1996) (Informal Objection did not provide *prima facie* evidence that signal strength would be less than required where it relied on a terrain profile showing the existence of a mountain that would block a line-of-sight between the transmitter and the community of license); *Radio Ingstad Minnesota, Inc.*, 11 FCC Rcd 8961 (1996) (terrain profile graphs did not prove violation of Section 73.315 merely because of intervening terrain conditions); *Margaret C. Schaller*, 5 FCC Rcd 5329 (1990) (failure to provide line-of-sight to a community of license because of a terrain obstruction does not necessarily imply lack of coverage). As in these cases, here, East Kentucky has not come close to demonstrating the existence of inadequate city-grade coverage by WVKM.

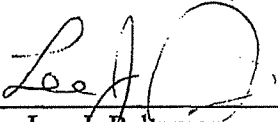
Moreover, Hatfield McCoy has provided a statement from its engineering consultant demonstrating that its proposal would provide a signal strength of 70dBu or more throughout the community of Matewan in compliance with Section 73.315 of the rules. See Technical

Statement of John Parle. Mr. Parle states that, despite the presence of terrain obstructions, the WVKM 70dBu extends well past the city limits. The WVKM proposal provides 70dBu coverage over all of its community of license. A long line of Commission precedent supports Mr. Parle's conclusion that 70dBu city coverage may be obtained despite less than perfect line-of-sight coverage to the city of license. *See Jackson and Salyersville, Kentucky*, 17 FCC Rcd 4662 (2002); *Madison, Indiana*, 14 FCC Rcd 9518 (1999); 13 FCC Rcd 2303 (1998); *Rocamond Radio, Inc. supra*, 7 FCC Rcd at 3610.

In view of the above, for the reasons stated herein, Hatfield McCoy respectfully urges that the Commission dismiss or deny the Petition for Reconsideration filed by East Kentucky Broadcasting Corporation as lacking in procedural and substantive merit.

Respectfully submitted,

**HATFIELD McCOY
COMMUNICATIONS, INC.**

By: 

Lee J. Peltzman
Its Attorney

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Dated: July 10, 2012

**TECHNICAL STATEMENT
PREPARED FOR
HATFIELD McCOY COMMUNICATIONS, INC.
FM Station WVKM
Facility ID No. 67039**

Technical Narrative

This technical exhibit was prepared on behalf of Hatfield McCoy Communications, Inc., licensee of FM Station WVKM, Matewan, West Virginia. Hatfield McCoy is also the permittee of a construction permit, BPH-20120604AAI, to construct new facilities and change its transmitter site. This statement addresses technical issues raised in an Informal Objection filed by East Kentucky Broadcasting Corporation ("East Kentucky"), which the FCC is treating as a Petition for Reconsideration.

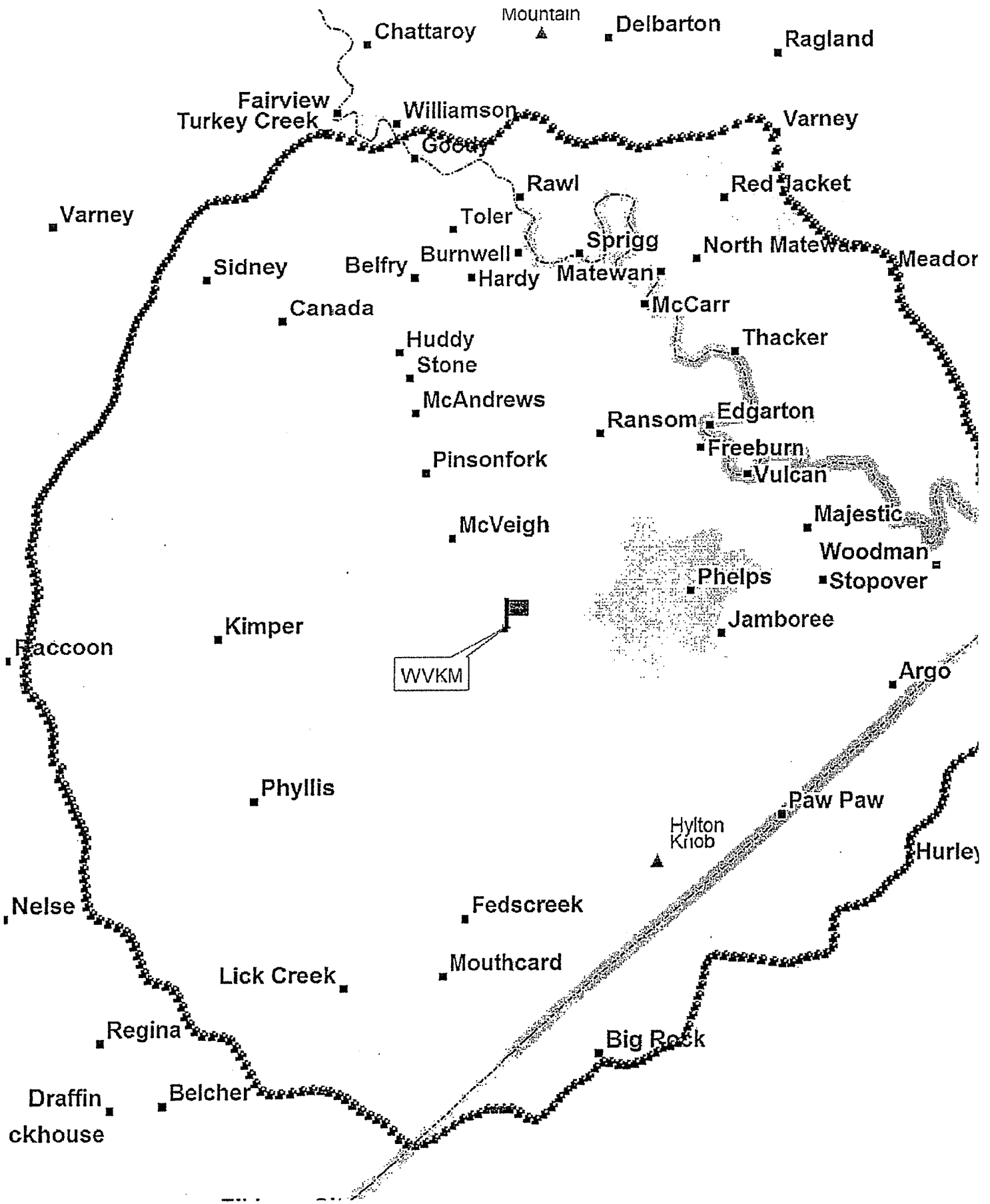
I have conducted a detailed examination of the technical facilities authorized in the above-referenced construction permit. The construction permit complies with the FCC's technical requirements. The objection raised by East Kentucky revolves around the question of whether city grade coverage will be provided to the community of Matewan by the facilities authorized in the WVKM outstanding construction permit. The FCC's rules require that the predicted 70dBu contour encompass the city of license. As shown in the attached Exhibit 1, the WVKM predicted 70dBu contour fully encompasses the city of Matewan. 360 terrain radials were drawn to show terrain variations to the maximum. It is easily recognized that the 70dBu contour extends well beyond the limits of Matewan, West Virginia.

For the above stated reasons, I conclude that the technical arguments raised in the East Kentucky Petition for Reconsideration are without merit and that the facilities specified in the WVKM construction permit are in full compliance with FCC requirements.

This Technical Narrative was prepared by John Parle. I have served as a technical consultant to numerous broadcast stations in the United States. I have filed applications before the Federal Communications Commission on numerous occasions, which have been granted and found to be in compliance with FCC requirements. All information contained herein is correct to the best of my knowledge.

John Parle
Technical Consultant
Hatfield McCoy Communications, Inc.

July 10, 2012



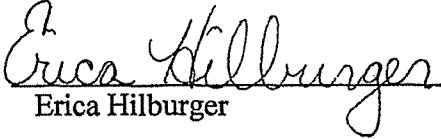
70 dBu CONTOUR LIMITS FOR WKMV-C3

CERTIFICATE OF SERVICE

I, Erica Hilburger, do hereby certify that copies of the foregoing "OPPOSITION TO PETITION FOR RECONSIDERATION" were sent via First Class U.S. Mail, postage prepaid, this 10th day of July, 2012 to the following:

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