

Engineering Statement and Waiver Justification

Miller Communications, Inc.

***Mattoon* Waiver Request and Justification**

Miller Communications, Inc. hereby respectfully requests a so-called “*Mattoon*” waiver of 74.1233(a)(1) of the Rules. The rule requires that, in order to be considered as a “minor” change in facilities, the 60 dBu contours of both the proposed and licensed facilities intersect on a translator seeking minor change consideration.¹ This requested waiver meets the waiver standards set forth in *Cromwell Group, Inc. of Illinois*.² Specifically, in *Mattoon*, Commission staff granted a waiver of the Rules based upon the mutual exclusivity of the licensed and the proposed 40 dBu contours with respect to the 60 dBu contours of the licensed and proposed facilities (See: Figure 1). As proposed, the 40 dBu and 60 dBu contours of W254CE present a mutually exclusive proposal and represent a minor change request under the Rules which is in the public interest.

The Commission has previously granted Section 74.1223(a) “*Mattoon*” waivers where an applicant has demonstrated that: (1) it does not have a history of filing “serial” minor modification applications; (2) the parameters of the proposed facility are mutually exclusive with the parameters of its licensed facility and, (3) while not alone dispositive, the translator will rebroadcast the programming of an on-air AM broadcast station.³

¹ The Commission's rules may be waived for good cause shown. An applicant seeking a rule waiver has the burden to plead with particularity the facts and circumstances that warrant such action. The Commission must give waiver requests “a hard look,” and an applicant must support its waiver request with a compelling showing. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.

² *The Cromwell Group, Inc. of Illinois*, Letter, 26 FCC Rcd 12685 (MB 2011) (“*Mattoon*”).

³ *Mattoon*, 26 FCC Rcd at 12686.

The instant application complies with these criteria in that:

- (1) Miller Communications, Inc. has no history of serial, or any other minor change applications (so- called 'hops') in order to move translator licenses from their originally licensed community of license into a larger market (or otherwise);
- (2) The proposed move of W54CE to Saint Mathews, SC is mutually exclusive with its currently licensed operation at Orangeburg, SC (See: Figure 1). Thus, grant of the instant application would not preclude any competitive application from being considered by the Commission;
- (3) It is also noted (See: Figure 2) that the 60 dBu contour the proposed W298AV facility fall completely within the required 2 mV/m contour of the proposed primary station WFMV(AM). The proposed move is a distance of 35.6 km.

Based upon the foregoing, Miller Communications, Inc. submits that the circumstances are such that the application meets all of the criteria for a waiver of Section 74.1233(a)(1) of the Rules and the instant waiver request should therefore be granted.

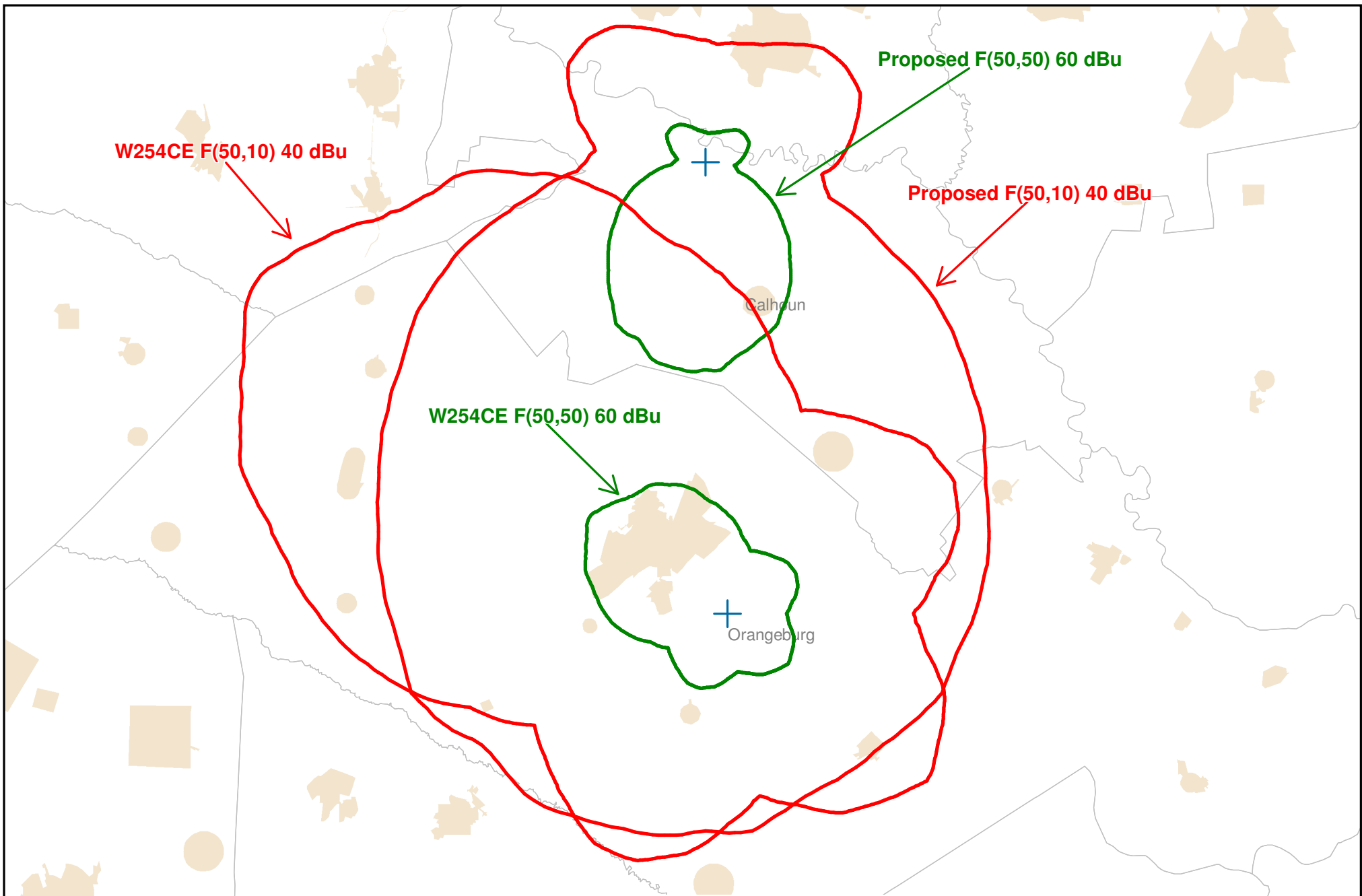


Figure 1
Mattoon Waiver Study - NED 3 Second Terrain
W254CE and Proposed

W254CE - 254D
33-26-35.60 N & 080-48-15.30 W
ERP: 0.25 kW
RC-AMSL: 160.0 m

Proposed - 254D
33-45-47 N & 080-49-22 W
ERP: 0.25 kW
RC-AMSL: 245.7 m

Scale 1:400,000
0 5 10 15 km

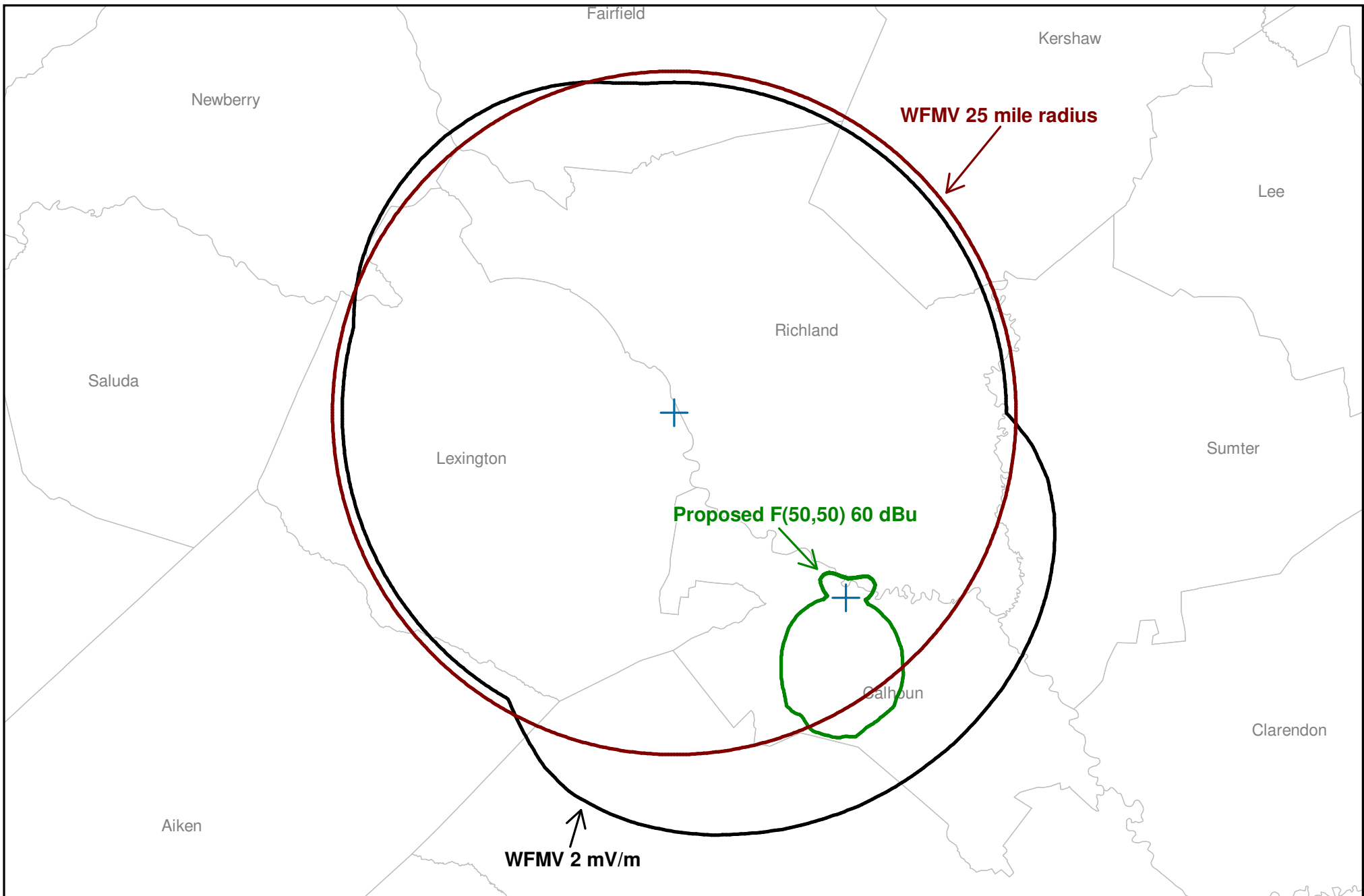


Figure 2
Primary Station Fill-In Study; NED 3 Second Terrain
Primary: WFMV; Translator: Proposed

WFMV - 620 kHz
33-57-34 N & 081-02-28 W
Power: 2.5 kW; Class D

Proposed - 254D
33-45-47 N & 080-49-22 W
ERP: 0.25 kW
RC-AMSL: 245.7 m

Scale 1:600,000
0 8 16 24 km