

MINOR CHANGE APPLICATION
LILLY BROADCASTING, L.L.C.
WENY-DT TELEVISION STATION
CH 36 - 602-608 MHZ - 75.0 KW
ELMIRA, NEW YORK
October 2008

EXHIBIT D

Community of License Coverage and Waiver Request

For the past several years, Lilly Broadcasting, L.L.C. (“Lilly”) has been negotiating with the various owners of the tower on which the current facilities of station WENY-TV are located for a long-term lease to enable the station to transition to digital operations from that site.¹ It has recently become clear that Lilly will not be able to reach agreement with the tower owners and that the current site will be unavailable for use by the station for its digital facilities.

As an alternative, Lilly has located a site which is used by local non-commercial educational station WSKA and by the Fox Network affiliate WYDC, and has negotiated arrangements with the owner of that site for its availability for use by WENY-DT. While this proposed site is only 17.5 kilometers to the west of the licensed site, and the WENY-DT facilities would be located on a substantially taller tower in comparison to the WENY-TV licensed site, there are terrain conditions that exist between the proposed site and the community of license. Exhibit C shows the predicted 48 dBu (50/90) city grade contour extends well beyond the community of license of Elmira, New York. However, terrain on several radials towards the city impacts the line of sight. Elmira, New York is located on bearings between 96° and 112° from the proposed WENY-DT tower site, as indicated on Exhibit D1. The distance to the most

1) The station was granted the authority to flash cut to digital operations in Public Notice DA-07-1847 (April 25, 2007).

distant boundary of the community ranges from 22.8 kilometers to 25.7 kilometers. A series of terrain profiles from the site through the community have been undertaken to determine the nature of the elevations between the site and the community.

Eight distinct radials were reviewed at points along the easternmost boundary (farthest from the site) of Elmira, New York. The profiles are attached as Exhibit D2 through D9. As indicated, several of the radials have terrain intrusion into the line of sight path due to terrain which is generally located on the west of the community, between the community and the proposed transmitter site. However, as shown on Exhibit D8, there is line of sight into Elmira, New York, with more of a grazing path indicated on Exhibit D9. Due to the existence of these indicated obstructions, an alternate propagation model was used to determine the level of signal theoretically arriving in Elmira, New York from the proposed WENY-DT. Using the Longley-Rice propagation model, with the default parameters for DTV calculations (including a 2.0 kilometer cell), the actual signal predicted to arrive in Elmira has been calculated.

Exhibit D10 is a map which shows the Longley-Rice predicted signal in Elmira. As indicated, the majority of Elmira is provided with a signal greater than 48 dBu from the proposed WENY-DT facility. Based on the depiction, we find that 90.0% of the population and 91.6% of the area of the community of Elmira, New York receive a Longley-Rice city grade signal. Further, the area of Elmira, New York, which receives less than a 48 dBu signal, would receive a level in excess of 41 dBu. The 41 dBu level was initially considered by the Commission as the

required signal to be placed over a community of license prior to the implementation of the use of the 48 dBu signal for UHF DTV stations as the city grade contour. Therefore, the residents of Elmira, New York, in the area defined as receiving below 48 dBu of signal, could still receive a viable signal from the proposed WENY-DT facility, as its strength is above 41 dBu. Therefore, Lilly respectfully requests a waiver of §73.625(a)(2) of the rules with respect to terrain obstructions in the path between the transmitter site and community of license and, to the extent necessary, a waiver of the coverage requirement to Elmira to provide less than 100% coverage to the community with a predicted city grade contour.

The grant of such a waiver would be in the public interest, in that it will enable WENY-DT to convert to digital operations by February 17, 2009, the scheduled digital transition date, and to continue to serve the population of Elmira and vicinity.² Alternatively, absent such a waiver, the station is likely to be without a site from which it can broadcast, with the result that the station would quite likely be forced to cease broadcasting altogether.³

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- 2) Because Lilly's proposal would use the existing WSKA antenna and transmission line for WENY-DT, Lilly believes that WENY-DT could complete construction of its post-transition DTV facilities soon after grant of a construction permit.
 - 3) Lilly has surveyed the suitability of other towers in the area but none would enable it to provide adequate coverage of its service area. There are in fact, only two tower sites in the Elmira area suitable for television stations: the site at which WENY-DT is currently located and from which it will be forced to move, and the site to which it proposes to relocate. All of the television stations in Elmira operate from one of these two sites.

The requested waiver is consistent with Commission precedent regarding waivers of coverage over a station's community of license.⁴ Moreover, grant of the waiver would not result in a large number of households losing service. There are 625 households in that portion of the city of Elmira which is predicted to receive a less than 48 dBu signal from WENY-DT. In the Elmira DMA, 92.6% of television households receive television signals from MVPDs (including SMATV and MDS). Assuming the same MVPD penetration rate in the city of Elmira as in the DMA as a whole, that leaves only 46 homes in that portion of Elmira that rely solely on over-the-air television service.⁵ On the other hand, failure to grant the waiver will leave WENY-DT, a financially strapped station operating in a small market, without alternatives, and creates the very real risk of a loss of service in the Elmira market.⁶ The station is currently the ABC affiliate for Elmira, and recently entered into an affiliation agreement with CBS, which currently does not have an Elmira affiliate, to carry CBS programming on a digital multicast channel. The loss of the station's service will therefore eliminate not only ABC service, but will eliminate the prospective CBS service in the market as well. WENY-DT also broadcasts one of the only two local newscasts in the Elmira DMA, and loss of WENY-DT service would leave the market with only a single television local news source.

4) See, e.g., *KRCA License Corp.*, 15 FCC Rcd 1794 (1999)(waiver granted where TV station signal covered 94.4% of the population of the community of license); *Pappas Telecasting, Inc.*, 92 FCC 2d 1288 (1983)(waiver granted where TV station signal covered 96.1% of the population of the community of license); *Arkansas Educational Television, Inc.*, 45 RR 2d 432 (1979)(waiver granted where TV station signal covered 82% of the population of the community of license). See also, *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order* in MM Docket No. 87.268, 13 FCC Rcd 6860, 6892 (1988), where the Commission, in analyzing Section 73.625(a)(2) of its Rules, recognized that "there are situations where line-of-sight coverage over the entire community is not possible. In such situations, licensees should avoid obstruction *to the extent possible*" (emphasis added).

5) These data are from 2000 U.S. Census information and the TVB Market Track webpage (www.tvb.org).

6) The poor financial performance of this station is a matter of record before the Commission. The station, has in fact, not had a profitable year since it was acquired by Lilly in 2000.

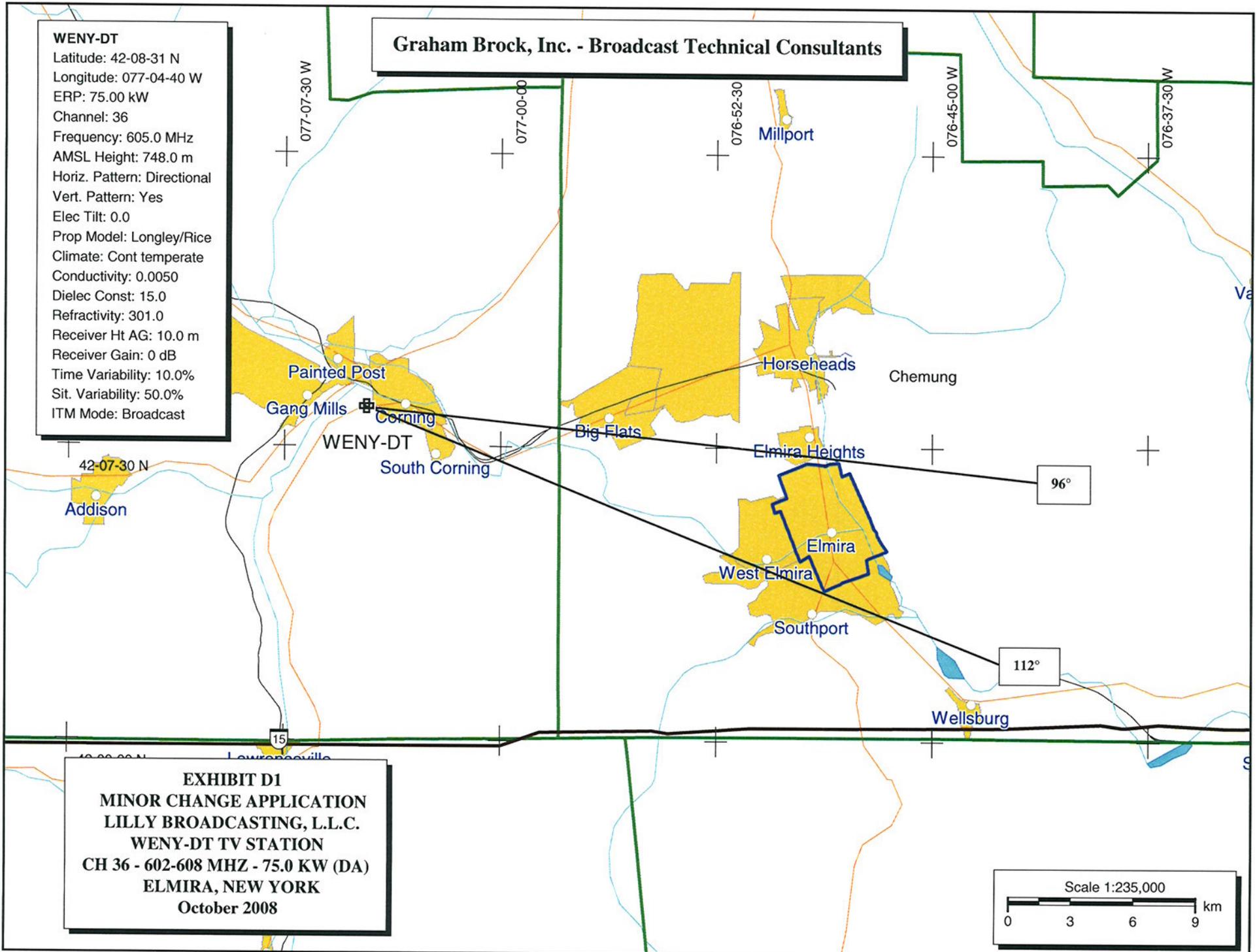
Finally, in order to mitigate any loss of over-the-air service, if the Commission were to adopt rules regarding digital TV boosters which would enable WENY-DT to use boosters to provide over-the-air service to households in Elmira not predicted to receive a 48 dBu signal, Lilly would implement such boosters to the extent feasible. Lilly also will respond to any complaints of loss of over-the-air service in the area of Elmira predicted not to receive a 48 dBu signal by sending technical personnel to such complainants' homes to assist with reception issues.

In summary, a grant of the requested waiver would have minimal practical impact on viewers and would assure that WENY-DT would be able to provide post-transition digital service to Elmira and the surrounding communities. Accordingly, Lilly urges the Commission to grant the waiver.

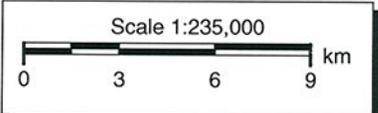
Graham Brock, Inc. - Broadcast Technical Consultants

WENY-DT

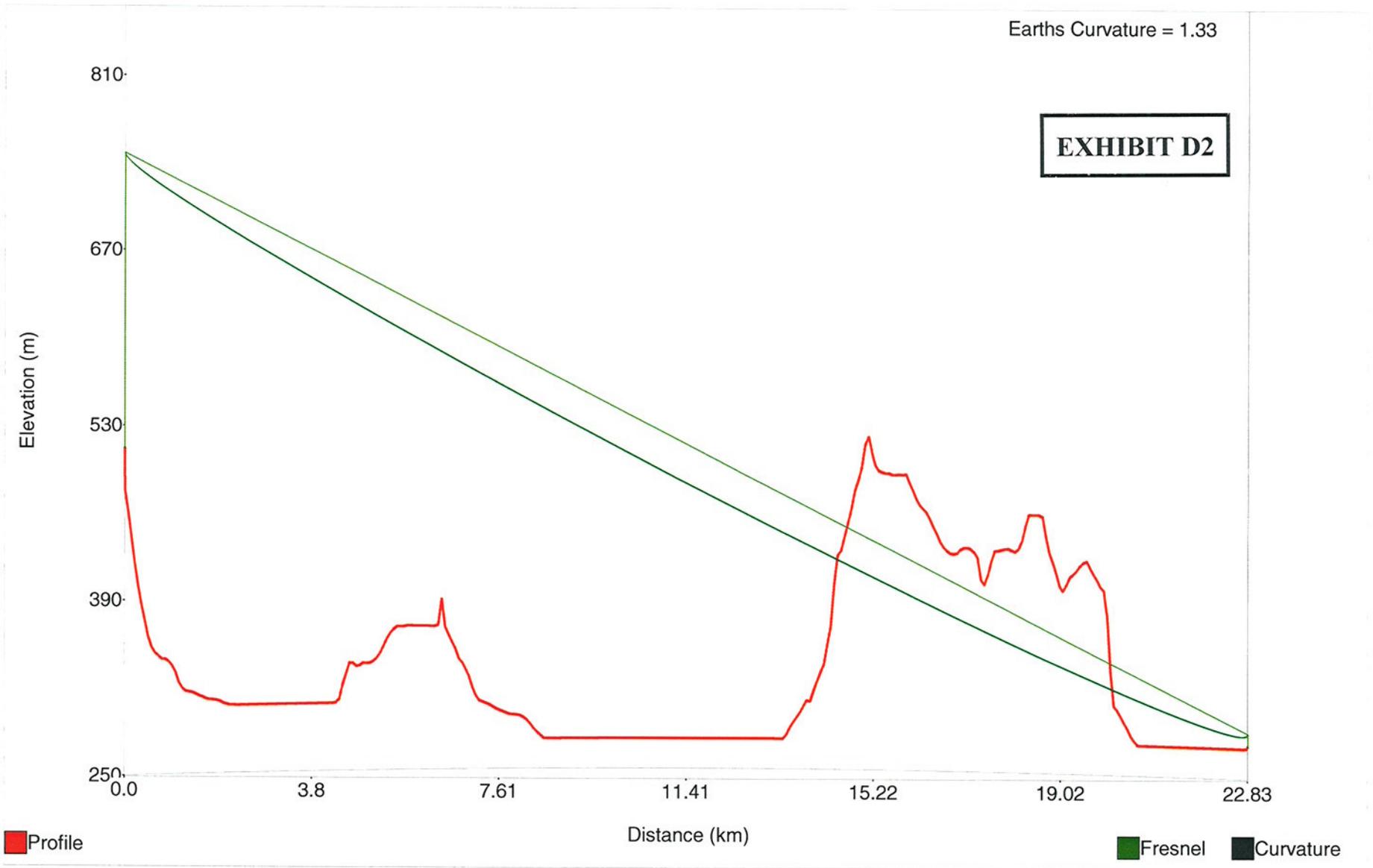
Latitude: 42-08-31 N
Longitude: 077-04-40 W
ERP: 75.00 kW
Channel: 36
Frequency: 605.0 MHz
AMSL Height: 748.0 m
Horiz. Pattern: Directional
Vert. Pattern: Yes
Elec Tilt: 0.0
Prop Model: Longley/Rice
Climate: Cont temperate
Conductivity: 0.0050
Dielec Const: 15.0
Refractivity: 301.0
Receiver Ht AG: 10.0 m
Receiver Gain: 0 dB
Time Variability: 10.0%
Sit. Variability: 50.0%
ITM Mode: Broadcast



**EXHIBIT D1
MINOR CHANGE APPLICATION
LILLY BROADCASTING, L.L.C.
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CH 36 - 602-608 MHZ - 75.0 KW (DA)
ELMIRA, NEW YORK
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Line of sight review - WENY-DT Elmira, New York



Starting Latitude: 42-08-31 N
Starting Longitude: 077-04-40 W

End Latitude: 42-07-09.11 N
End Longitude: 076-48-12.31 W

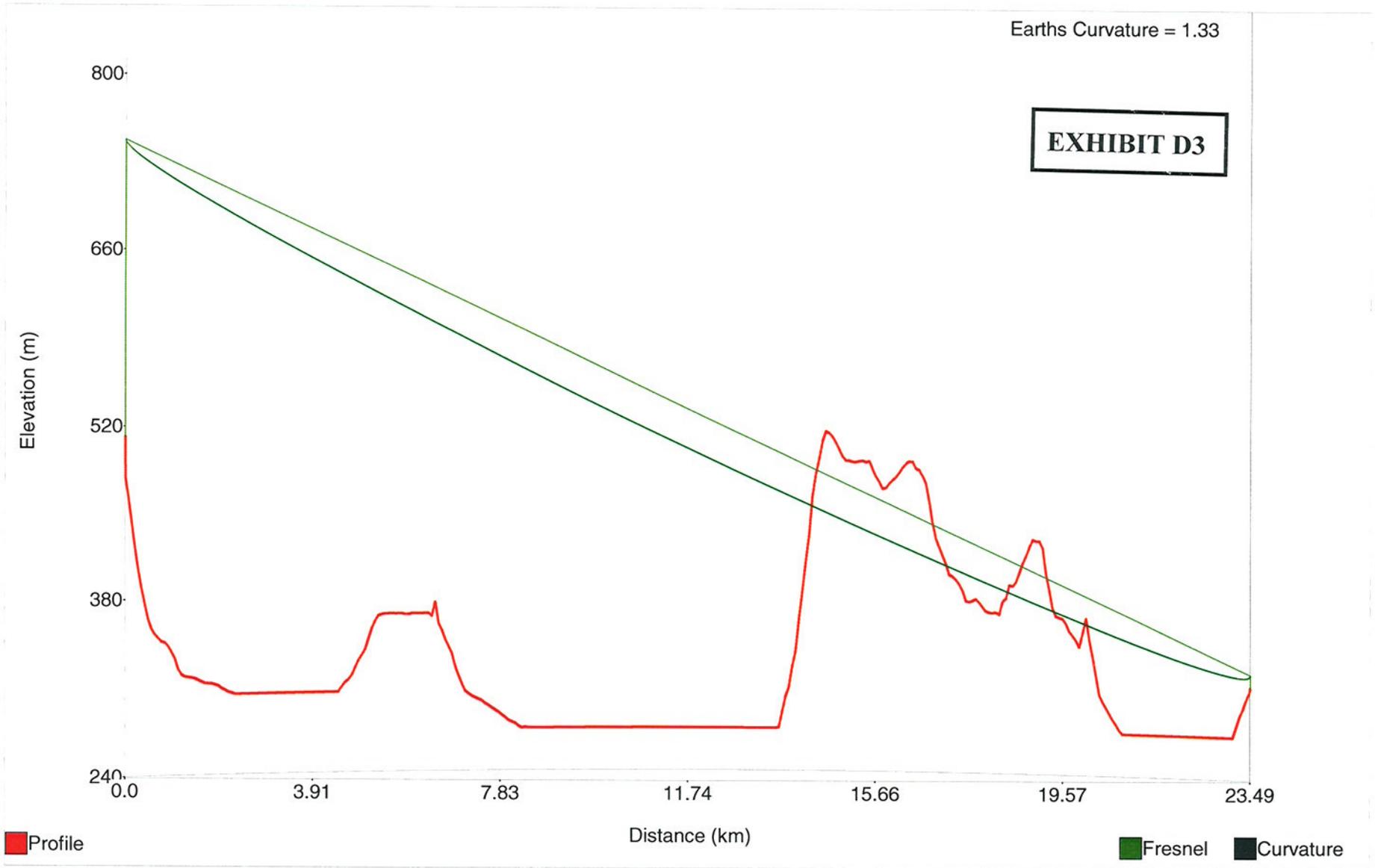
Distance: 22.83 km
Bearing: 96.26 deg

Transmitter Height (AG) = 236.0 m
Receiver Height (AG) = 10.0 m

Transmitter Elevation = 512.0 m
Receiver Elevation = 276.1 m

Frequency = 605.0 MHz
Fresnel Zone: 0.6

Line of sight review - WENY-DT Elmira, New York



Starting Latitude: 42-08-31 N
Starting Longitude: 077-04-40 W

End Latitude: 42-06-40.91 N
End Longitude: 076-47-48.03 W

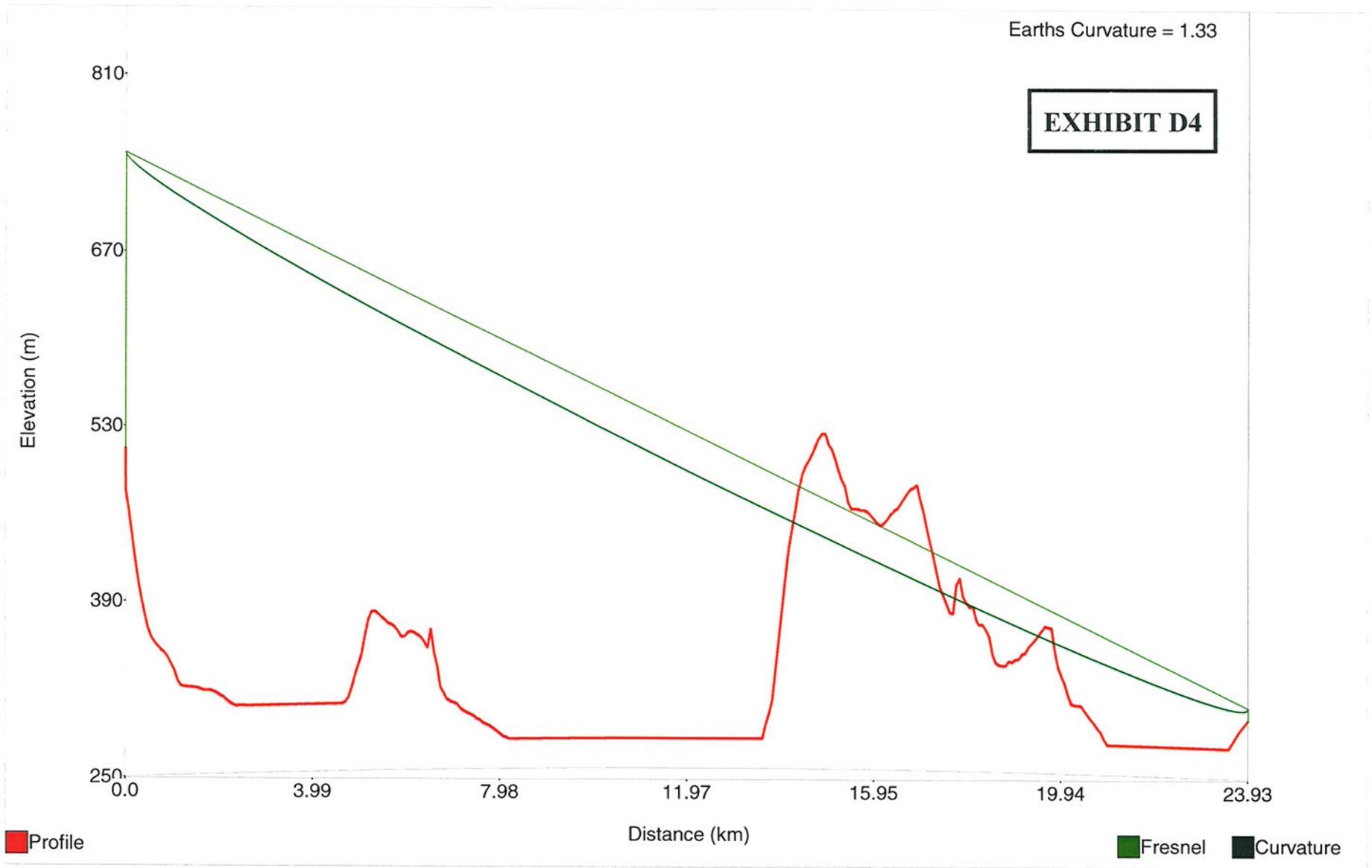
Distance: 23.49 km
Bearing: 98.22 deg

Transmitter Height (AG) = 236.0 m
Receiver Height (AG) = 10.0 m

Transmitter Elevation = 512.0 m
Receiver Elevation = 314.0 m

Frequency = 605.0 MHz
Fresnel Zone: 0.6

Line of sight review - WENY-DT Elmira, New York



Starting Latitude: 42-08-31 N
Starting Longitude: 077-04-40 W

End Latitude: 42-06-14.73 N
End Longitude: 076-47-34.58 W

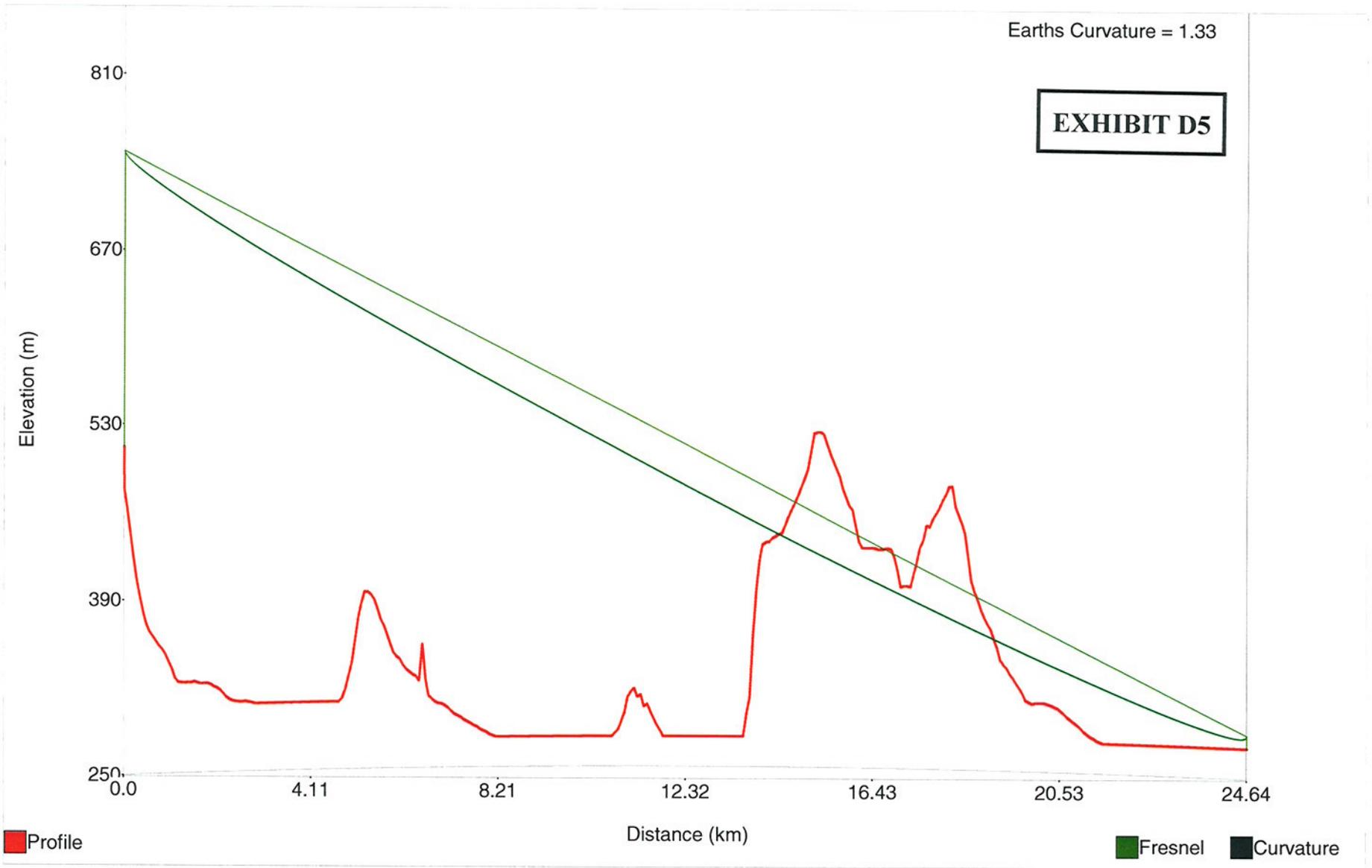
Distance: 23.93 km
Bearing: 100.03 deg

Transmitter Height (AG) = 236.0 m
Receiver Height (AG) = 10.0 m

Transmitter Elevation = 512.0 m
Receiver Elevation = 297.2 m

Frequency = 605.0 MHz
Fresnel Zone: 0.6

Line of sight review - WENY-DT Elmira, New York



Starting Latitude: 42-08-31 N
Starting Longitude: 077-04-40 W

End Latitude: 42-05-46.51 N
End Longitude: 076-47-10.31 W

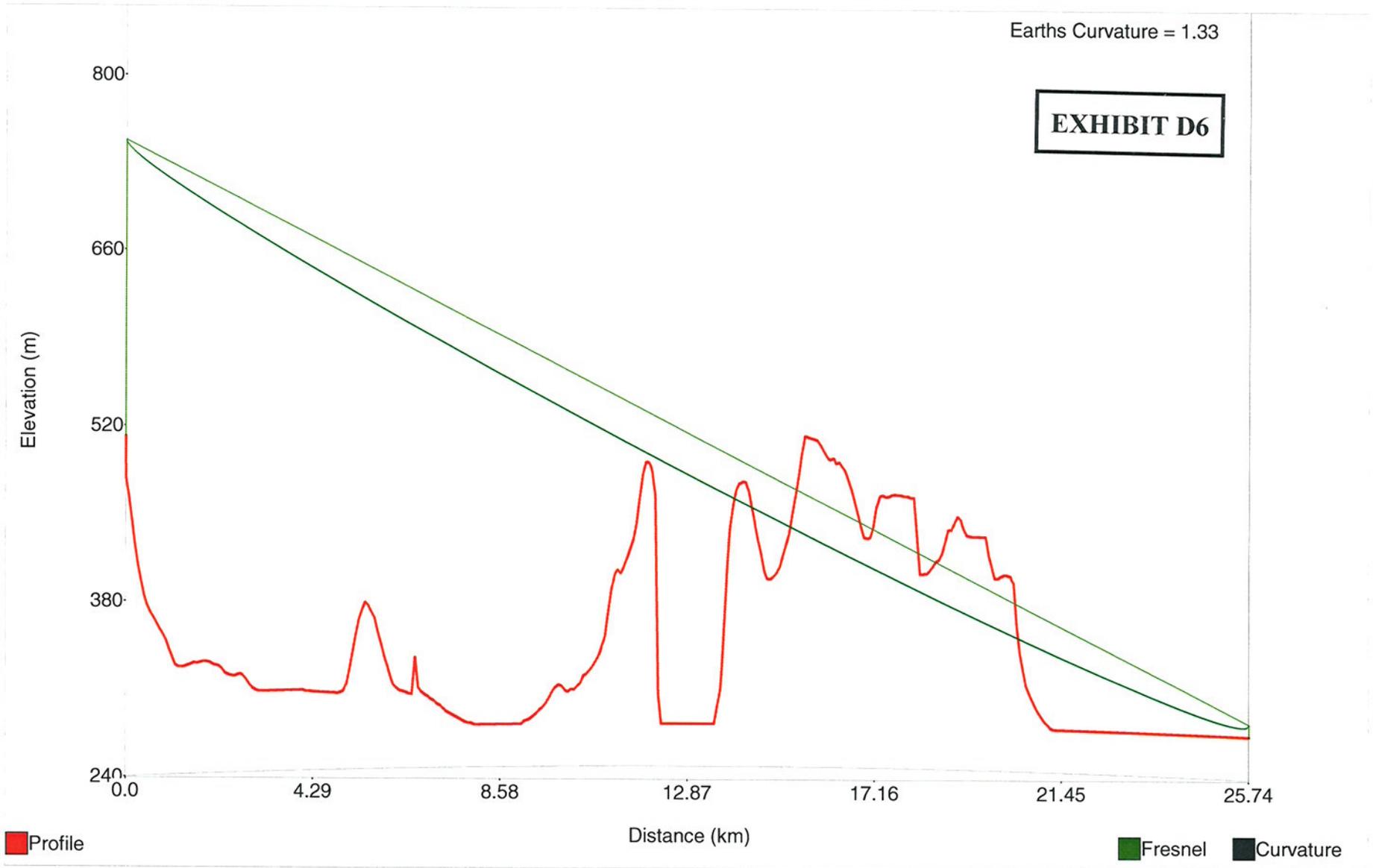
Distance: 24.64 km
Bearing: 101.79 deg

Transmitter Height (AG) = 236.0 m
Receiver Height (AG) = 10.0 m

Transmitter Elevation = 512.0 m
Receiver Elevation = 274.0 m

Frequency = 605.0 MHz
Fresnel Zone: 0.6

Line of sight review - WENY-DT Elmira, New York



Starting Latitude: 42-08-31 N
Starting Longitude: 077-04-40 W

End Latitude: 42-04-54.14 N
End Longitude: 076-46-38 W

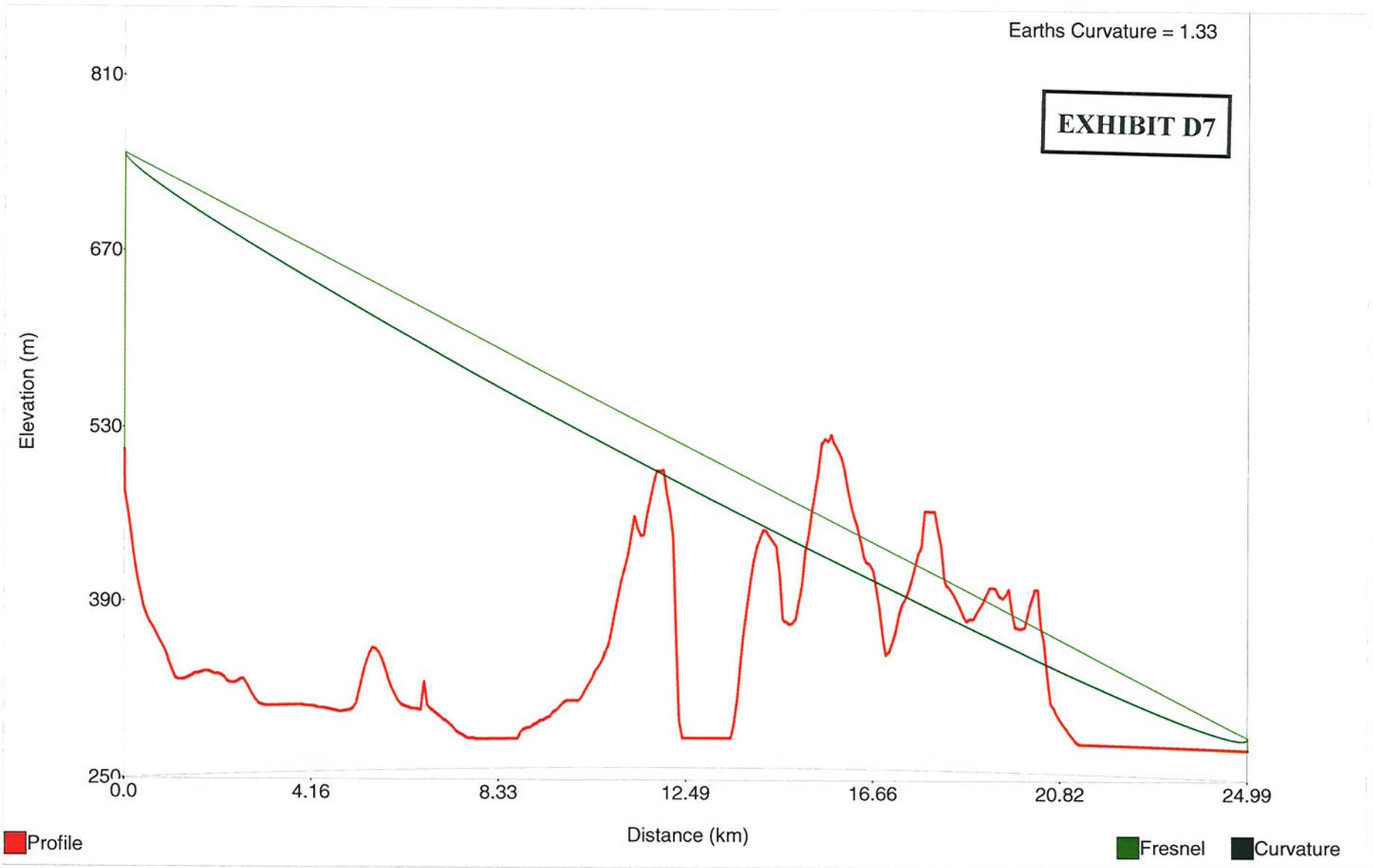
Distance: 25.74 km
Bearing: 104.96 deg

Transmitter Height (AG) = 236.0 m
Receiver Height (AG) = 10.0 m

Transmitter Elevation = 512.0 m
Receiver Elevation = 274.0 m

Frequency = 605.0 MHz
Fresnel Zone: 0.6

Line of sight review - WENY-DT Elmira, New York



Starting Latitude: 42-08-31 N
Starting Longitude: 077-04-40 W

End Latitude: 42-04-44.12 N
End Longitude: 076-47-15.86 W

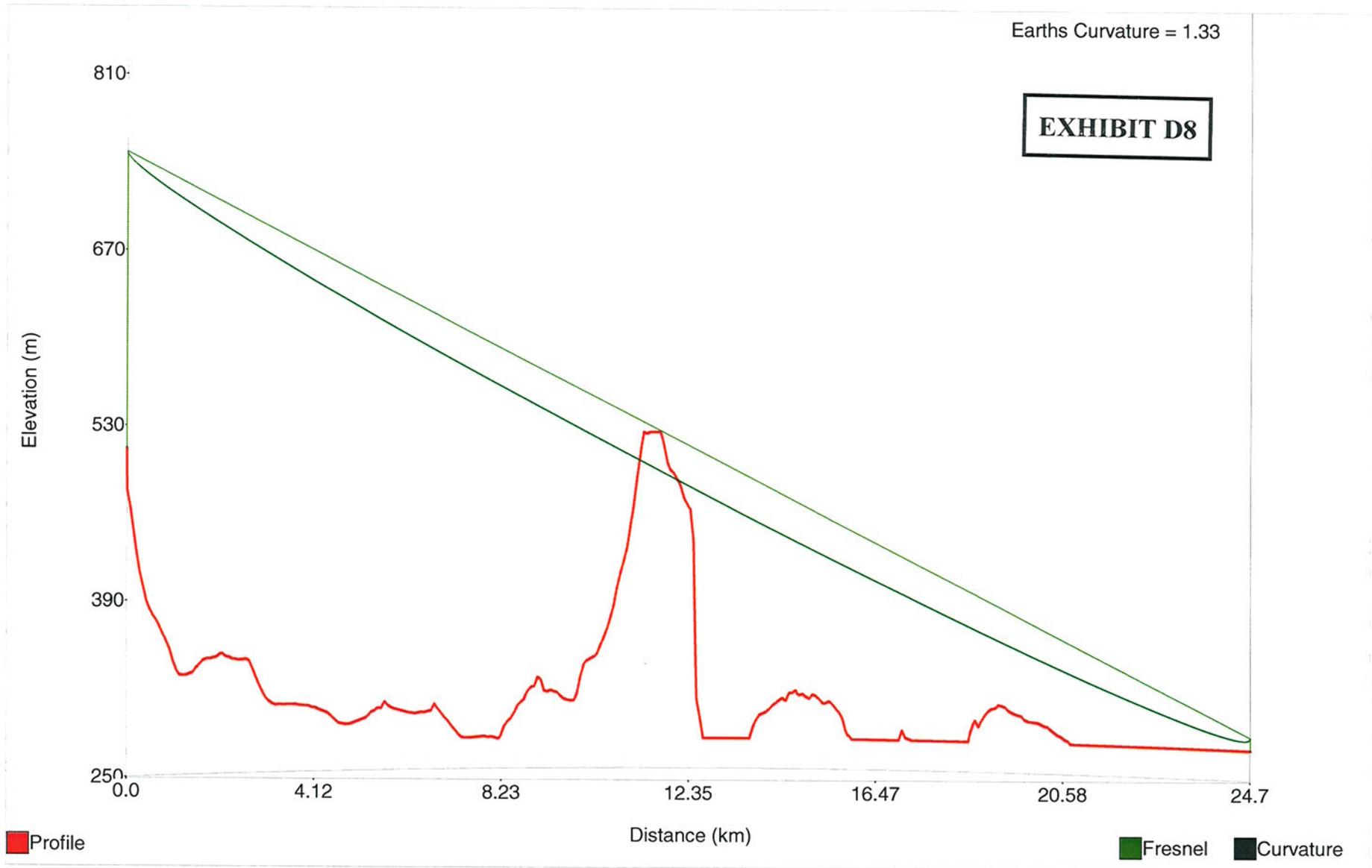
Distance: 24.99 km
Bearing: 106.17 deg

Transmitter Height (AG) = 236.0 m
Receiver Height (AG) = 10.0 m

Transmitter Elevation = 512.0 m
Receiver Elevation = 274.0 m

Frequency = 605.0 MHz
Fresnel Zone: 0.6

Line of sight review - WENY-DT Elmira, New York



Starting Latitude: 42-08-31 N
Starting Longitude: 077-04-40 W

End Latitude: 42-04-11.95 N
End Longitude: 076-47-42.93 W

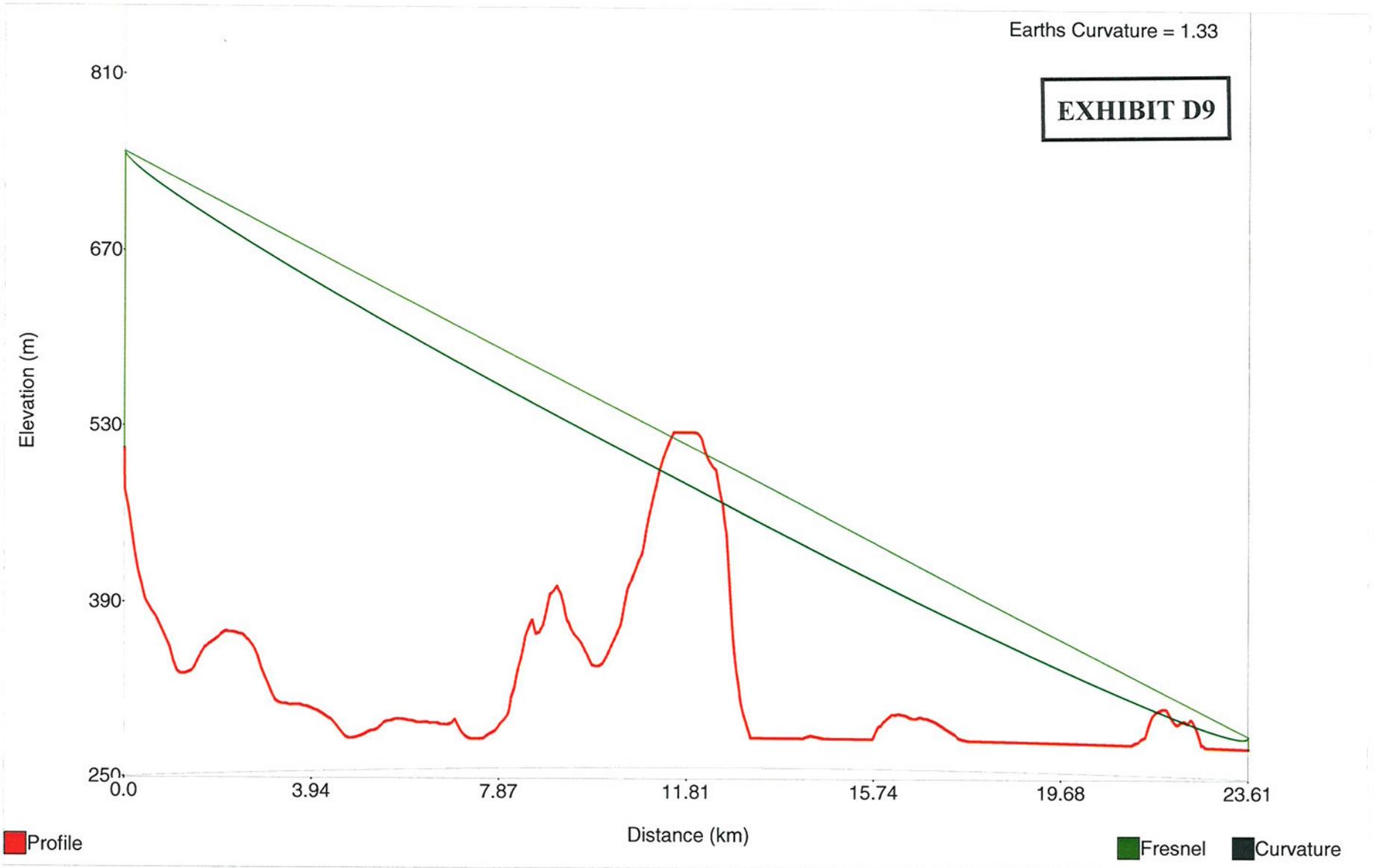
Distance: 24.70 km
Bearing: 108.79 deg

Transmitter Height (AG) = 236.0 m
Receiver Height (AG) = 10.0 m

Transmitter Elevation = 512.0 m
Receiver Elevation = 274.0 m

Frequency = 605.0 MHz
Fresnel Zone: 0.6

Line of sight review - WENY-DT Elmira, New York



Starting Latitude: 42-08-31 N
Starting Longitude: 077-04-40 W

End Latitude: 42-03-53.90 N
End Longitude: 076-48-42.40 W

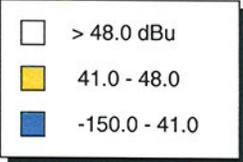
Distance: 23.61 km
Bearing: 111.15 deg

Transmitter Height (AG) = 236.0 m
Receiver Height (AG) = 10.0 m

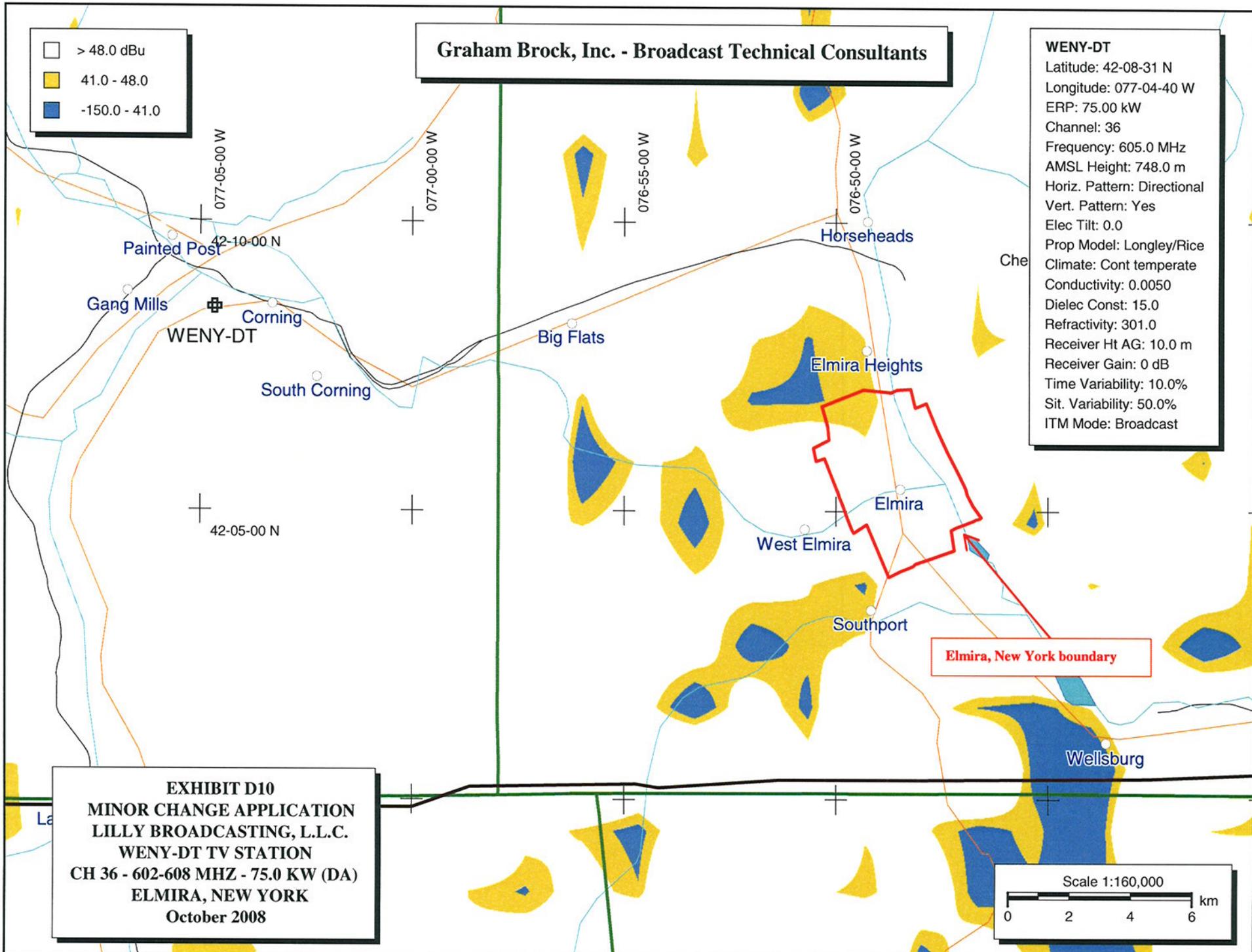
Transmitter Elevation = 512.0 m
Receiver Elevation = 274.0 m

Frequency = 605.0 MHz
Fresnel Zone: 0.6

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WENY-DT
 Latitude: 42-08-31 N
 Longitude: 077-04-40 W
 ERP: 75.00 kW
 Channel: 36
 Frequency: 605.0 MHz
 AMSL Height: 748.0 m
 Horiz. Pattern: Directional
 Vert. Pattern: Yes
 Elec Tilt: 0.0
 Prop Model: Longley/Rice
 Climate: Cont temperate
 Conductivity: 0.0050
 Dielec Const: 15.0
 Refractivity: 301.0
 Receiver Ht AG: 10.0 m
 Receiver Gain: 0 dB
 Time Variability: 10.0%
 Sit. Variability: 50.0%
 ITM Mode: Broadcast



Elmira, New York boundary

EXHIBIT D10
MINOR CHANGE APPLICATION
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