

JUN 27 2012

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, DC 20554

In re

HATFIELD MCCOY COMMUNICATIONS, INC.	)	FCC File No. BPH-20120604AAI
for Minor Modification of WVKM(FM), Matewan,	)	FCC Facility ID No. 67039
West Virginia	)	
	)	

To: Office of the Secretary  
 Attn: Media Bureau

**INFORMAL OBJECTION**

East Kentucky Broadcasting Corporation, by its attorneys, pursuant to Section 73.3587 of the Commission's rules, hereby submits its objection to the pending application seeking a minor modification of the WVKM(FM), Matewan, West Virginia license.<sup>1</sup> In support of this Informal Objection, the following is submitted:

**MAJOR TERRAIN OBSTRUCTIONS BLOCK WVKM FROM 70 DBU COVERAGE  
 OVER ANY PORTION OF ITS COMMUNITY OF LICENSE**

1. The WVKM antenna center of radiation is blocked from its community of license by three major terrain obstructions that rise 166 meters, 160 meters and 200 meters above line-of-sight on two separate azimuths. Attached is an engineering analysis of Anderson Associates (the "Engineering Analysis") showing the absolute lack of line-of-sight between the WVKM transmitting antenna and the Matewan community of license.

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<sup>1</sup> There is currently no FCC Public Notice of a grant of this application. The FCC's CDBS, its informal, informational database, shows that the WVKM application may have been granted late last Friday, possibly after the close of business at the FCC. Under such circumstances, if the application was granted after the close of FCC business then its grant can be effective no earlier than then following business day which is today. Accordingly, this Informal Objection is timely filed.

2. When propagation is considered, given the substantial distance between the WVKM transmitter site and Matewan, no portion of the Matewan community receives anything near a 70 dBu signal. Section 73.315 of the Commission's rules requires both 70 dBu signal coverage and a lack of major terrain obstructions:

**Section 73.315 FM transmitter location.**

(a) The transmitter location shall be chosen so that, on the basis of the effective radiated power and antenna height above average terrain employed, a minimum field strength of 70 dB above one  $\mu\text{V/m}$  (dBu), or 3.16 mV/m, will be provided over the entire principal community to be served.

(b) ... The location of the antenna should be so chosen that line-of-sight can be obtained from the antenna over the principle city or cities to be served; in no event should there be a major obstruction in this path (emphasis added)

3. While line-of-sight to a proposed community of license is not absolutely required under Section 73.315(b) of the Commission's rules<sup>2</sup>, when the presumption of coverage is rebutted, an engineering study is required by the applicant to show that "the received signal strength as transmitted from the [proposed] site will exceed 70 dBu and will encompass the principal community."<sup>3</sup>

4. The WVKM application fails to note the major terrain obstructions. The effect of the major terrain obstructions is a failure of WVKM to provide any 70 dBu coverage to its community of license. An applicant bears the burden of demonstrating by a credible engineering showing that its site will be suitable to encompass the community of license with a signal of

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<sup>2</sup> See, e.g., *The Servant Management Group, Inc.*, 5 FCC Rcd 2023 (1990) at ¶ 2, citing *Rush County Broadcasting Co., Inc.*, 26 FCC 2d 480 (1970).

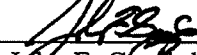
<sup>3</sup> *Coal Run, Kentucky and Clinchco, Virginia*, 26 FCC Rcd 8557 (2011) at ¶ 10.

requisite strength. WVKM has failed to satisfy this burden. Accordingly, its application must be denied.

WHEREFORE, for the reasons above, the Hatfield McCoy Communications, Inc. application for a minor change to its facilities should be denied.

Respectfully submitted,

**EAST KENTUCKY BROADCASTING  
CORPORATION**

By:   
John F. Garziglia  
Its Attorney

Womble Carlyle Sandridge & Rice, LLP  
1200 19<sup>th</sup> Street, N.W. Suite 500  
Washington, DC 20036  
(202) 857-4455

June 25, 2012

**ANALYSIS OF WVKM(FM)  
MATEWAN, WV APPLICATION  
BPH-20120604AAI**

An analysis of the WVKM(FM) minor change application (BPH-20120604AAI) as amended proposing a change in site reveals that it does not comply with the requirements of § 73.315 of the Commission's rules.

Specifically, there are substantial terrain obstructions to Matewan. Exhibit E2A shows two major obstructions of 166 meters and 160 meters on the 17.0 degree azimuth and exhibit E2B shows a peak obstruction of 200 meters with a width of 2 km on the 18.1 degree azimuth to Matewan. This is clearly in contravention of § 73.315(a) and (b) (see excerpted rules below). The terrain obstructions prevent the delivery of a 70 dBu contour over any part of the community based on the use of the FCC Point To Point Version 2 methodology. This method is appropriately used in cases of major terrain obstructions and has been routinely accepted by the Commission.

**§ 73.315 FM transmitter location.**

- (a) The transmitter location shall be chosen so that, on the basis of the effective radiated power and antenna height above average terrain employed, a minimum field strength of 70 dB above one  $\mu\text{V/m}$  (dBu), or 3.16 mV/m, will be provided over the entire principal community to be served.
- (b) .....  
The location of the antenna should be so chosen that line-of-sight can be obtained from the antenna over the principle city or cities to be served; in no event should there be a major obstruction in this path (emphasis added).

The Longley-Rice calculations were made using the USGS three (3) second terrain database which the Commission has recognized as more accurate in MB Docket No. 04-319:

The 3 second terrain database provides a more detailed terrain depiction than the 30 second terrain database referenced in Section 73.312 (d) of the rules. Section 73.312 (d) permits the use of the 30 second terrain database, or better, in a disputed case (at footnote 4).

A plots of the FCC Point To Point 70 dBu signal is provided as exhibit E1. The exhibit shows that no portion of Matewan is served by a 70 dBu contour. This exhibit was developed using V-Soft Communications' Probe4 software which incorporates the FCC PTP2 algorithm,

and which has been routinely accepted by the Commission in the past. Study parameters are included on the exhibit.

It is concluded that the WVKM application does not meet the requirements of § 73.315(a) or (b).

A handwritten signature in blue ink that reads "Charles M. Anderson". The signature is fluid and cursive, with the first name "Charles" and last name "Anderson" clearly legible.

Charles M. Anderson 6-21-2012  
1519 Euclid Avenue  
Bowling Green, KY 42103  
270-782-0246

**WVKM.A**

BPH20120604AAI  
Latitude: 37-30-03.60 N  
Longitude: 082-13-39.50 W  
ERP: 0.70 kW  
Channel: 294  
Frequency: 106.7 MHz  
HAAT: 378.0 m  
AMSL Height: 796.0 m  
Elevation: 756.0 m  
Horiz. Pattern: Omni  
Vert. Pattern: No  
Prop Model: Longley/Rice  
Climate: Cont temperate  
Conductivity: 0.0050  
Dielec Const: 15.0  
Refractivity: 311.0  
Receiver Ht AG: 9.1 m  
Receiver Gain: 0 dB  
Time Variability: 50.0%  
Sit. Variability: 50.0%  
ITM Mode: Broadcast

**E1**

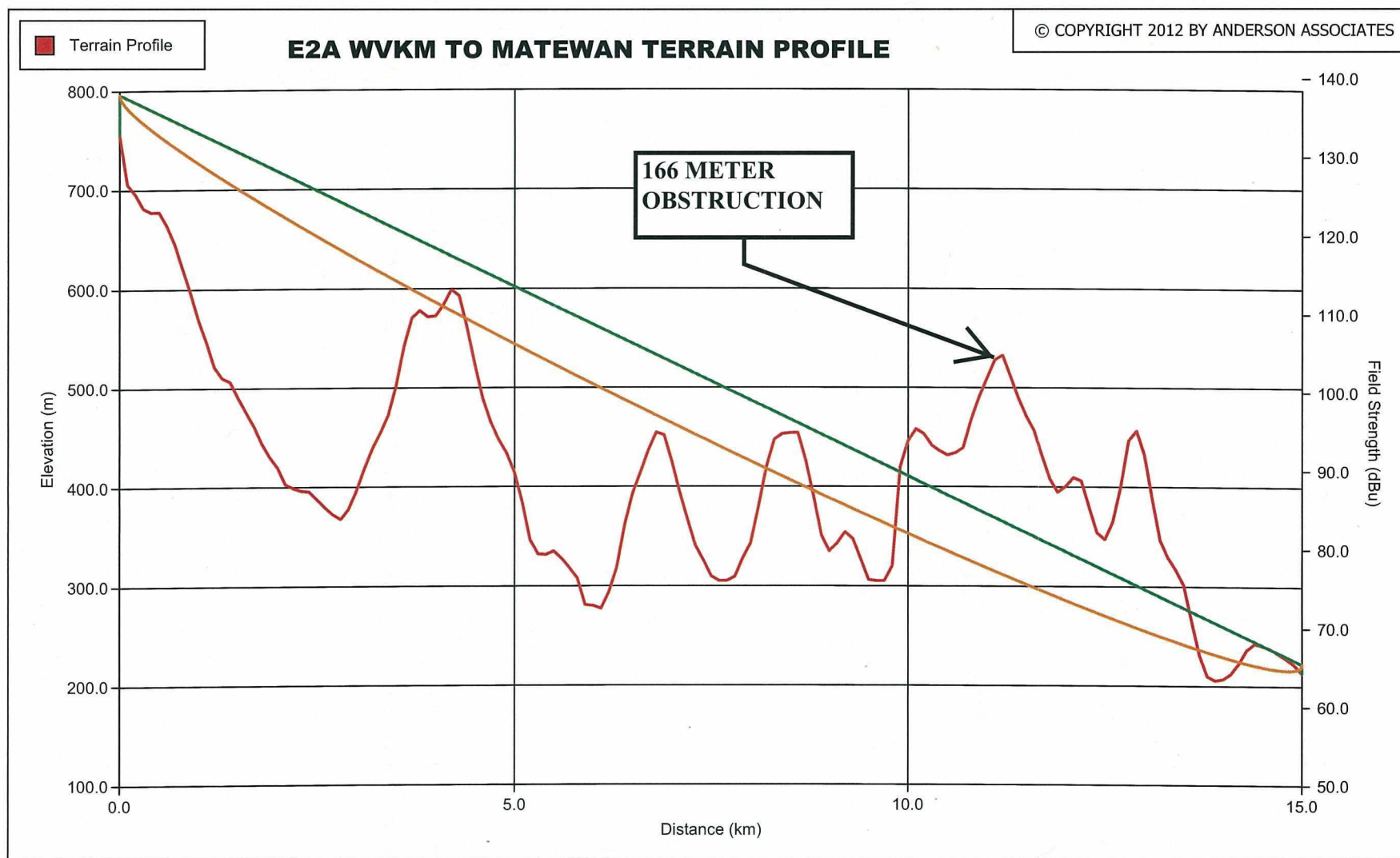
MATEWAN, WV BOUNDARY  
IS NOT ENCOMPASSED  
BY THE FCC PTP2 70 DBU  
CONTOUR.

FCC POINT TO POINT (VERSION 2)  
CALCULATED 70 DBU USING USGS  
THREE (3) SECOND TERRAIN.

+  
WVKM.A

Scale 1:75,000

0 1 2 3 km

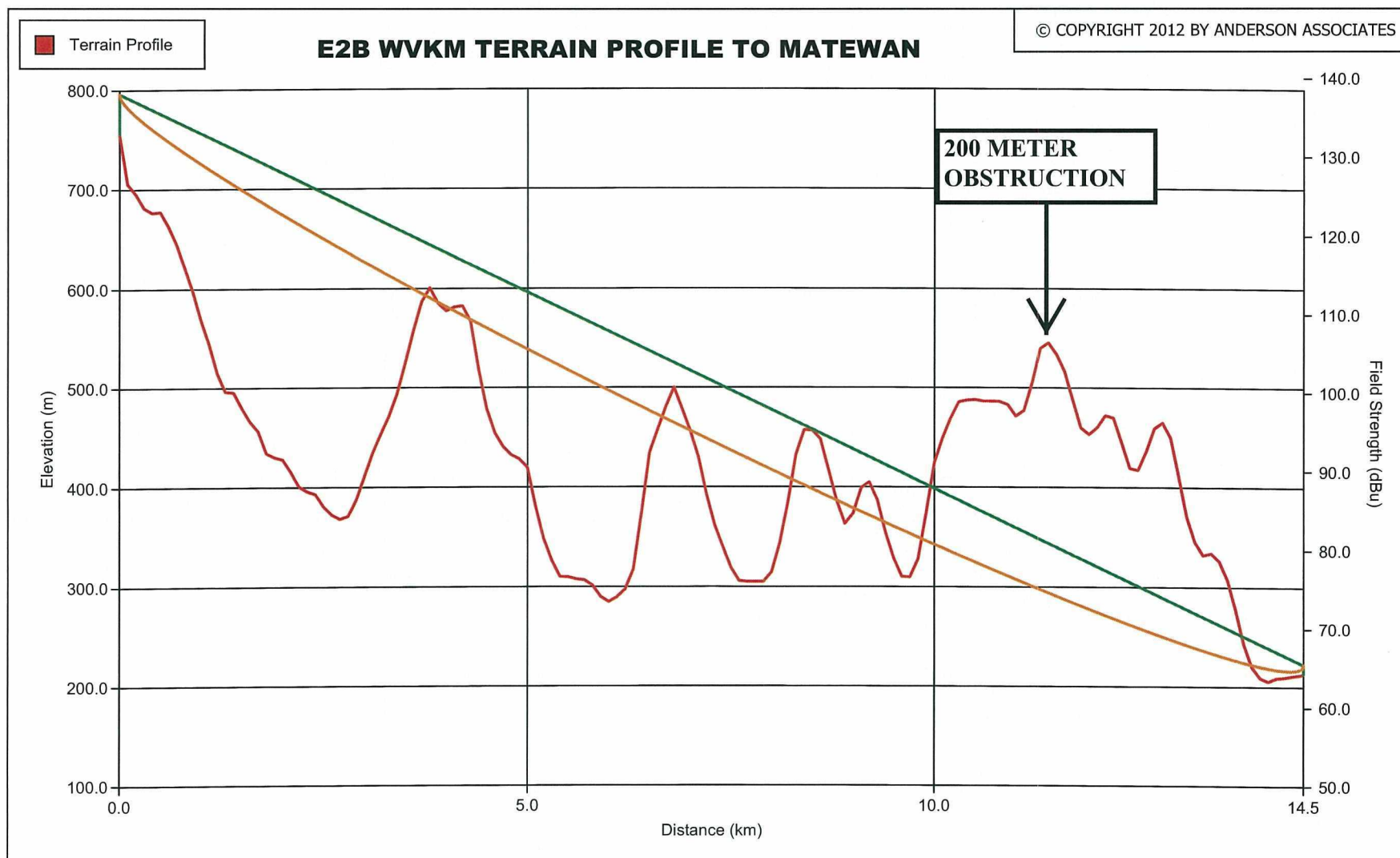


Start Latitude: 37-30-03.60 N  
Start Longitude: 082-13-39.50 W

End Latitude: 37-37-45.92 N  
End Longitude: 082-10-29.13 W

Distance: 15.0 km  
Bearing: 18.13 deg





Start Latitude: 37-30-03.60 N  
Start Longitude: 082-13-39.50 W

End Latitude: 37-37-34.34 N  
End Longitude: 082-10-46.13 W

Distance: 14.53 km  
Bearing: 17.01 deg



**CERTIFICATE OF SERVICE**

I, John F. Garziglia, an attorney at the law firm of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that a true copy of the foregoing "Informal Objection" was sent this 25<sup>th</sup> day of June, 2012 via U.S. Mail, postage prepaid, to the following:

\*Lee J. Peltzman, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street, N.W. Suite 240  
Washington, DC 20036

  
\_\_\_\_\_  
John F. Garziglia

\* Via U.S. Mail and E-Mail