Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 04-319
Table of Allotments,	)	RM-10984
FM Broadcast Stations.	)	
(Coal Run, Kentucky, and Clinchco,	)	
Virginia)	)	
	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 2014 **Released: August 15, 2014**

By the Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) an Application for Review of the *Reconsideration Decision*[1] in this proceeding filed July 18, 2011, by Dickenson County Broadcasting Corporation ("Dickenson County"), licensee of Station WDIC-FM, Clinchco, Virginia; and (2) a Joint Request for Approval of Settlement Agreement filed February 22, 2013, by Dickenson County and East Kentucky Broadcasting Corporation ("East Kentucky"), licensee of Station WPKE-FM, Coal Run, Kentucky; (3) and various related pleadings.[2]

I. BACKGROUND

2. The *Reconsideration Decision* reinstated and granted a Petition for Rule Making filed by East Kentucky, upgrading its Station WPKE-FM, Coal Run, Kentucky from Channel 276A to non-adjacent Channel 221C3 at a new transmitter site, pursuant to Section 1.420(g) of the Commission's Rules.[3] To accommodate the Station WPKE-FM upgrade, the *Reconsideration Decision* involuntarily modified the license for Dickenson County's Station WDIC-FM to specify operation on Channel 276A in lieu of Channel 221A. The *Reconsideration Decision* concluded that the Station WPKE-FM upgrade is technically feasible and rejected Dickenson County's argument that a terrain obstruction between Coal Run and the proposed reference site would prevent delivery of a 70 dBu signal to Coal Run in contravention of Section 73.315(b).[4]

3. Under the terms of the settlement, Dickenson County agrees to the dismissal of its Application for Review with prejudice, and East Kentucky agrees to the dismissal of its Petition for Rule Making with prejudice and the cancellation of the WPKE-FM construction permit for Channel

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[1] *See Coal Run, Kentucky, and Clinchco, Virginia,* Memorandum Opinion and Order, 26 FCC Rcd 8557 (MB 2011) ("*Reconsideration Decision*").

[2] East Kentucky filed an Opposition to Application for Review on August 2, 2011. Dickenson County filed a Reply to Opposition to Application for Review on August 17, 2011.

[3] *See* 47 C.F.R. § 1.420(g) (permitting the modification of license for a non-reserved band FM station to specify operation on a higher class, non-adjacent channel through a notice and comment rule making proceeding).

[4] *See* 47 C.F.R. § 73.315(b).

221C3 at Coal Run. As a result, both stations would return to the channels that they occupied prior to the initiation of this proceeding.[5]

II. DISCUSSION

4. After reviewing the settlement request, we conclude that it would serve the public interest because it would resolve a proceeding that has been pending for ten years. We also find that the settlement complies with Section 1.420(j) because neither party will receive any monetary consideration. On the contrary, the only consideration is the mutual promises of the parties to withdraw various pleadings.

5. In order to implement the settlement, we take various actions. First, we dismiss Dickenson County's Application for Review with prejudice.[6] Second, we dismiss East Kentucky's Petition for Rule Making with prejudice and cancel the WPKE-FM construction permit for Channel 221C3.[7] Third, we rescind the *Reconsideration Decision.* Fourth, we modify the Media Bureau's Consolidated Data Base System to reflect as the reserved assignments for the listed stations: (1) Channel 276A in lieu of Channel 221C3 at Coal Run, Kentucky, for Station WPKE-FM; and (2) Channel 221A in lieu of Channel 276A for Station WDIC-FM, Clinchco, Virginia.

6. ACCORDINGLY, IT IS ORDERED, that the Joint Request for Approval of Settlement Agreement filed by Dickenson County Broadcasting Corporation and East Kentucky Broadcasting Corporation IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

[5] As part of this settlement, Dickenson agrees to the dismissal of its Petition to Deny directed against the WPKE-FM license renewal application (File No. BRH-20120329AFO), and East Kentucky agrees to the dismissal of its Informal Objection to the WDIC-FM license renewal application (File No. BRH-20110601AAT). We are concurrently approving the dismissal of these pleadings in a *Public Notice.*

[6] *See, e.g., Stanley Group Broadcasting, Inc.,* Order, 4 FCC Rcd 8031, 8032 (OGC 1989) (approving on delegated authority a settlement agreement and dismissal of Application for Review); *Family Broadcasting, Inc.,* Order to Show Cause, 25 FCC Rcd 7591, 7593 (2010) (noting staff dismissal of Application for Review under delegated authority).

[7] *See* File No. BPH-20111103AIP.