

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

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In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 03-57
Table of Allotments, FM Broadcast Stations) DA-03-627
Ft. Collins, Westcliffe and Wheat Ridge, Colorado) RM-10565
)
TO: Chief, Audio Division

MEADOWLARK GROUP, INC.'S RESPONSE TO JACOR'S REPLY COMMENTS

Meadowlark Group, Inc. ("MGI"), by its attorney, hereby respectfully responds to the Reply Comments of Jacor Broadcasting of Colorado, Inc. ("Jacor"), filed in this proceeding on May 20, 2003, as follows:

1. In this proceeding, MGI submitted a counterproposal to allot an FM channel to the community of Creede, Colorado. That counterproposal, if adopted, will provide a first local broadcast service to a community clearly deserving of same. Furthermore, the Creede allotment, when implemented, will serve substantial numbers of people in currently existing white and gray areas.

2. It is said that imitation is the sincerest form of flattery. Here, MGI is flattered because, on May 19, 2003, Jacor, itself, filed a Petition for Rule Making, seeking to allot a different channel to Creede, Colorado. That petition, moreover, was accompanied by an expression of interest. Thus, Jacor, itself, has recognized that Creede needs a station. Moreover, it has recognized the needs of those persons who will receive a first or second reception service from the Creede facility.

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3. There is only one problem with the Jacor proposal: It won't work. As shown in the technical narratives prepared by Frank McCoy and attached hereto, Jacor's hypothetical transmitter site suffers from severe shadowing in the direction of Creede. Indeed, the channel is completely blocked in the direction of that community. Furthermore, there does not appear to be any transmitter site available which will serve Creede using the channel that Jacor proposes and still serve all of the white and gray areas claimed by Jacor.

4. In its Reply Comments, Jacor attacks MGI's counterproposal on the grounds that it is allegedly contingent. This is so, Jacor argues, because it requires downgrading of another Jacor station, KRFX, Denver, Colorado, from a Class C to a Class C0.

5. Given that an order looking towards the downgrading of Station KRFX was already in existence when MGI filed its counterproposal, we do not agree that the counterproposal is contingent. In any event, as shown in Mr. McCoy's technical narratives, attached, it is possible to leave Station KRFX as a Class C facility and still adopt MGI's counterproposal at Creede. This can be done by imposing a site restriction on the proposed channel substitution at Poncha Springs, Colorado.¹

6. Site restrictions are not favored. See, *Bordelonville, Louisiana*, 16 FCC Rcd 13297 (2001) and cases cited therein. See also, *Rangely, Silverton and Ridgway, Colorado*, 15 FCC Rcd 18266 (2000), recon. denied, 6 FCC Rcd 143 (1991); and *Vacaville, California*, 4 FCC Rcd 8315 (1989), recon. denied, 6 FCC Rcd 143 (1991). It is preferable to make allotments without a site restriction or with the minimum site restriction. Therefore, the most preferential system of

¹The coordinates of the alternative are North Latitude 38-27-08; West Longitude 106-13-19.

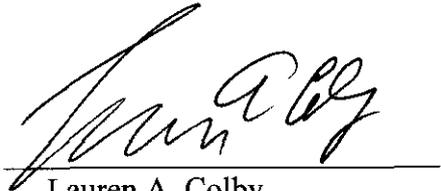
allotments would be achieved by downgrading Station KRFX to a Class C0 facility and making the channel substitution at Poncha Springs without a site restriction. If, however, the Commission is unwilling to do that, MGI respectfully suggests the site restriction as an alternative method of allotting a channel to Creede - an allotment which both Jacor and MGI agree is in the public interest.

June 6, 2003

Law Office of
LAUREN A. COLBY
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113

Respectfully submitted,

MEADOWLARK GROUP, INC.

By: 

Lauren A. Colby
Its Attorney

Affidavit and Qualifications of Technical Consultant

State of Illinois)
Community of Forest Lake) ss:
County of Lake)

Frank G. McCoy, being duly sworn, deposes and says that he is an employee of American Media Services which firm has been engaged to provide technical and other consulting in connection with the preparation of the attached.

He attended Illinois Institute of Technology in Chicago and has been active in broadcast engineering for over 25 years as an employee of and consultant to numerous FCC licensees.

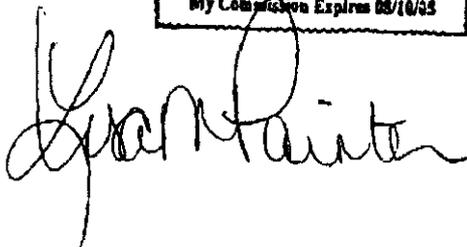
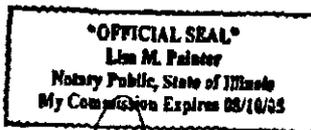
The attached Technical Narrative, other documents of a technical nature and the associated exhibits were either prepared by him or under his direction.

I, Frank McCoy, declare under penalty of the laws of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: June 5, 2003



Frank G. McCoy
Affiant



Seal

Technical Supplement

Poncha Springs

In order to afford the FCC Staff the widest array of possible options in granting the proposed new allotment at Creede, Colorado as well as resolving any mutual exclusivity between the channel substitution at Poncha Springs and the Staff's action, if any, in granting a construction permit for Class C facilities for KRFX, this Technical Supplement describes an alternate site for the allotment of 277A at Poncha Springs.

The proposed alternate reference site to accommodate a possible grant of 278C at Denver, should KRFX tender an application consistent with Class C operation, is 37-28-8 North Latitude, 106-13-19 West Longitude.

As can be seen from the figure depicted on the map entitled "Proposed Hypothetical Site Clear of KRFX Class C" there is an area of approximately 56.53 square kilometers which is compliant with 73.207 spacing from both the licensed site and the pending application site of KRFX if the Staff elects to treat KRFX as a Class C. This area is also within 16.1 kilometers of the most distant point of the community boundaries of Poncha Springs.

Most of the area and, in particular, the proposed alternate reference site, lie within the boundaries of the San Isabel National Forest. The United States Forest Service employs "Landspersons" to administer the leasing of land in the national forests for uses that are deemed suitable. The reference site is on geophysical prominence locally referred to as the "Devil's Armchair." The site and the surrounding area are designated by the Forest Service for use by recreational and all-terrain motorized vehicles. Thus there are roads and jeep trails already present that provide access to the proposed alternative site.

In discussions with the Forest Service Landspersons, it was indicated that the Forest Service would accept an application to qualify the proposed reference site as an electronic site. There are other existing electronic sites nearby which may also be suitable. Because of the elevation at the proposed site, only 100 watts ERP is required for a full facilities Class A station. Lower power from greater elevation facilitates the use of other already-operating sites as well as permitting any new site, qualified and leased for the operation of 277A, to also serve other users.

As an accommodation to the concerns of environmentalists that lighted towers are a distraction to some kinds of birds and other wildlife, the tower height has been limited in this analysis to 199 feet (60.7 meters) above ground. This lower tower height has been used to confirm line of sight to representative points within Poncha Springs (terrain profile graphs have been provided) as well as to draw the predicted FCC F[50,50] City Grade contour. This contour is depicted along with the hypothetical city grade contour on a map entitled "Map Showing 100% Community Coverage From Proposed Alternate reference Site."

KRFX, Denver

The plan originally offered in the counterproposal sought only an alternate channel at Poncha Springs. This was, in turn, based on reliance upon the commitment of Jacor, in response to the Order to Show Cause in RM-10630, to construct the facility described in BPH-20030424AAO. Jacor filed a request for dismissal of the Akron, Colorado 279C1 allotment request in RM-10630 and specifically cited this application as being in response to the Order to Show Cause.

We have questioned the merits and technical logic behind the granting of these Lookout height waivers. The merits remain dubious since legitimate Class C alternate sites are available which cover a greater number of persons than Lookout Mountain¹. It is nevertheless within the authority of the FCC to grant such waivers. But there can be no argument that the relationship between antenna elevation, terrain elevation and contour distance is fundamental to the FM Table of Allotments and form the basis for all the assumptions embodied in the spacing requirements of 73.207. Indeed, all site questions and interference issues are fundamentally impacted by the relationships among these quantities.

In the application filed by Jacor for KRFX, the Poncha Springs allotment site is 153.9 kilometers distant at a bearing of 208.5 degrees true. Similarly, the Poncha Springs allotment site is 153.7 kilometers from the licensed site of KRFX [BLH-4823] at bearing 208.6 degrees true.

Each of these bearings lies outside the terrain elevation radials Jacor wishes considered in the calculation of antenna elevation above average terrain. In their application, Jacor sought to throw out the data from the four radials along bearing 180 degrees (South) through 315 degrees (Northwest). The licensed site for KRFX is similarly treated. The FCC has previously affirmed this practice, but to such a limited extent, perhaps the implications were not fully understood or appreciated.

¹ The applied-for facility of KRFX, treated as a non-directional at the specified elevation 2256 Meters AMSL, covers approximately 2,597,649 persons while the licensed facility of KYGO, a true Class C facility, covers approximately 2,859,205 persons – an increased service of over 10%.

In general, 73.207 spacing is required, among other things, as an assurance that a suitable site can be found for a station built pursuant to a proposed allotment or reallocation. This policy has served the FCC well and has resulted in very few allotment grants where no practical site can be found.

In the case of Poncha Springs, the requirement that the allotment site for 277A be 165 kilometers from KRFX wildly overstates the required interference protection. Along the bearings toward Poncha Springs and the surrounding areas, KRFX is a class C1 as the facility is defined by antenna elevation above average radial terrain.

Part 73 of the rules anticipated anomalies of this kind in affording additional site flexibility where the application site and facility is known. In 73.215 (b)(ii) the rules state:

“...and the antenna HAATs in the directions of concern that would result from a nondirectional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the applicable station class, without regard to any other restrictions that may apply (e.g. zoning laws, FAA constraints, application of Sec. 73.213). [italics added]

73.215 makes no provision for recognition of a “waiver” or even an extraordinary calculation of antenna height, instead affirming the standard 8-radial method even if the face of “...other restrictions that may apply...”

Conclusion

While 73.215 and other site-specific considerations are generally not a part of the allotment process and we do not seek to introduce such ideas here, they do impact future applications for those allotments. And from the clear intent of 73.215(b)(ii) the FCC seeks to remedy any possible allotment anomalies by allowing for practical site flexibility at the application stage.

Thus the FCC may take any of three approaches in Poncha Springs:

1. The FCC may properly class KRFX as C1 or grant a waiver of the height requirement to KRFX as Class C0, thus granting the reallocation of 277A at Poncha Springs with no change in site from the present 248A allotment.
2. The FCC may grant KRFX a waiver of the Class C height requirement and may still grant the requested 277A channel substitution at Poncha Springs at 37-28-8 North Latitude, 106-13-19 West Longitude, secure in the knowledge that the eventual applicant for Poncha Springs will enjoy an enormous usable area, owing to the impact of “throwing out” of elevation radials by KRFX.

3. The FCC may, by acknowledging the inseparability of antenna elevation, terrain elevation and contour distance, grant a waiver of the height for KRFX and a specially short spaced allotment of 277A at Poncha Springs. Since the spacing rules would be distorted by the artificial determination of contour distance of KRFX by treating the station as a Class C along the "thrown out" radials towards Poncha Springs, such a short spaced allotment would be entirely consistent with the granting of a waiver of the antenna elevation requirement for KRFX.

Any of these choices further allow the FCC to grant all the reallocation and facility requests made variously by Tsunami (for 277C0 at Wheat Ridge, CO), Meadowlark (for 248C at Creede, CO) and Jacor (for a CP 278C or C0, Denver, CO and renewal of the waiver).

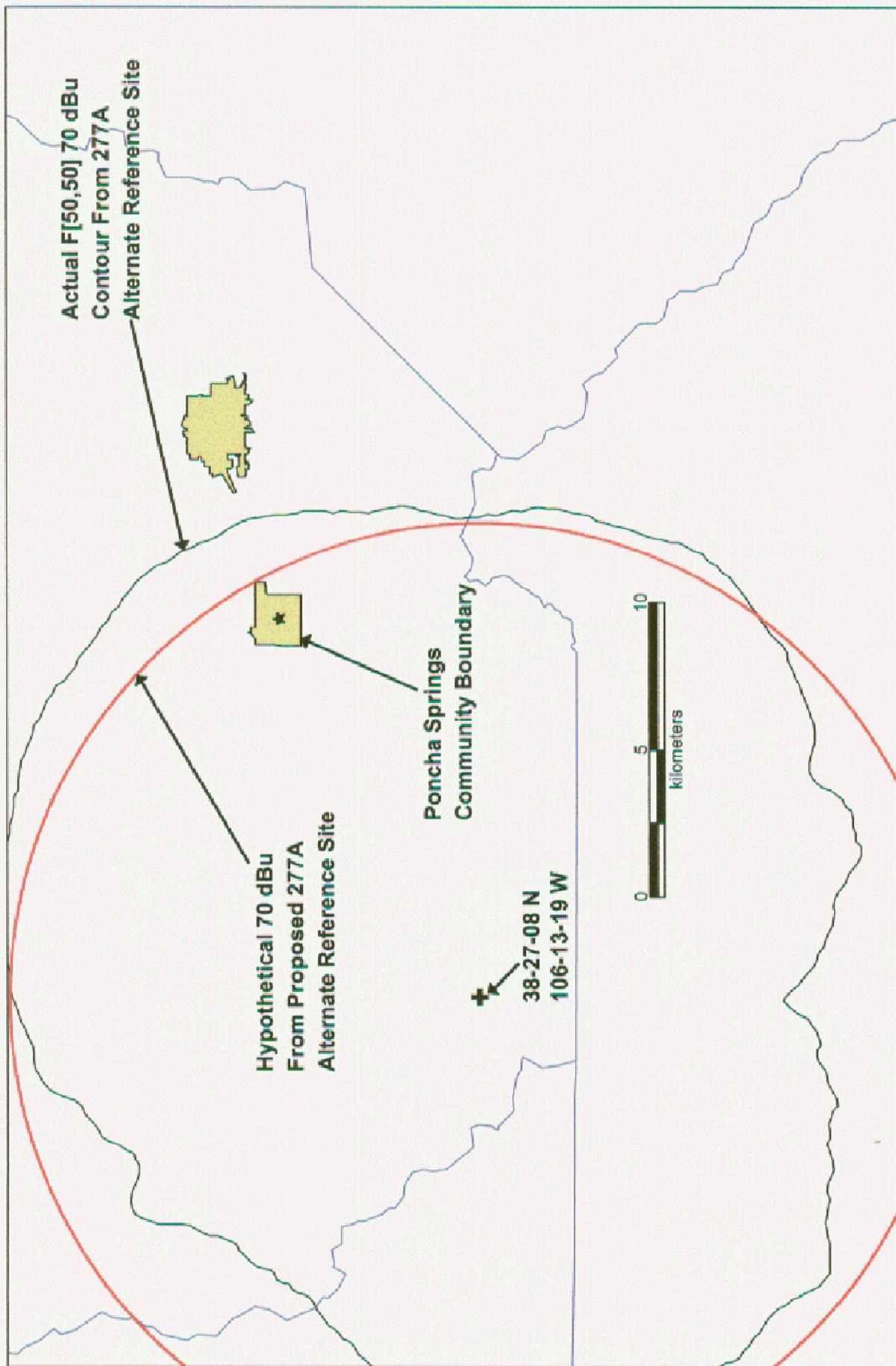
FM Study for: ALLOCR FCC Database Date: 5/16/2003 38-27-08
 Location: PONCHA SPRINGS, CO Channel Class: A 106-13-19

[*] by HAAT indicates calculated as missing in database.

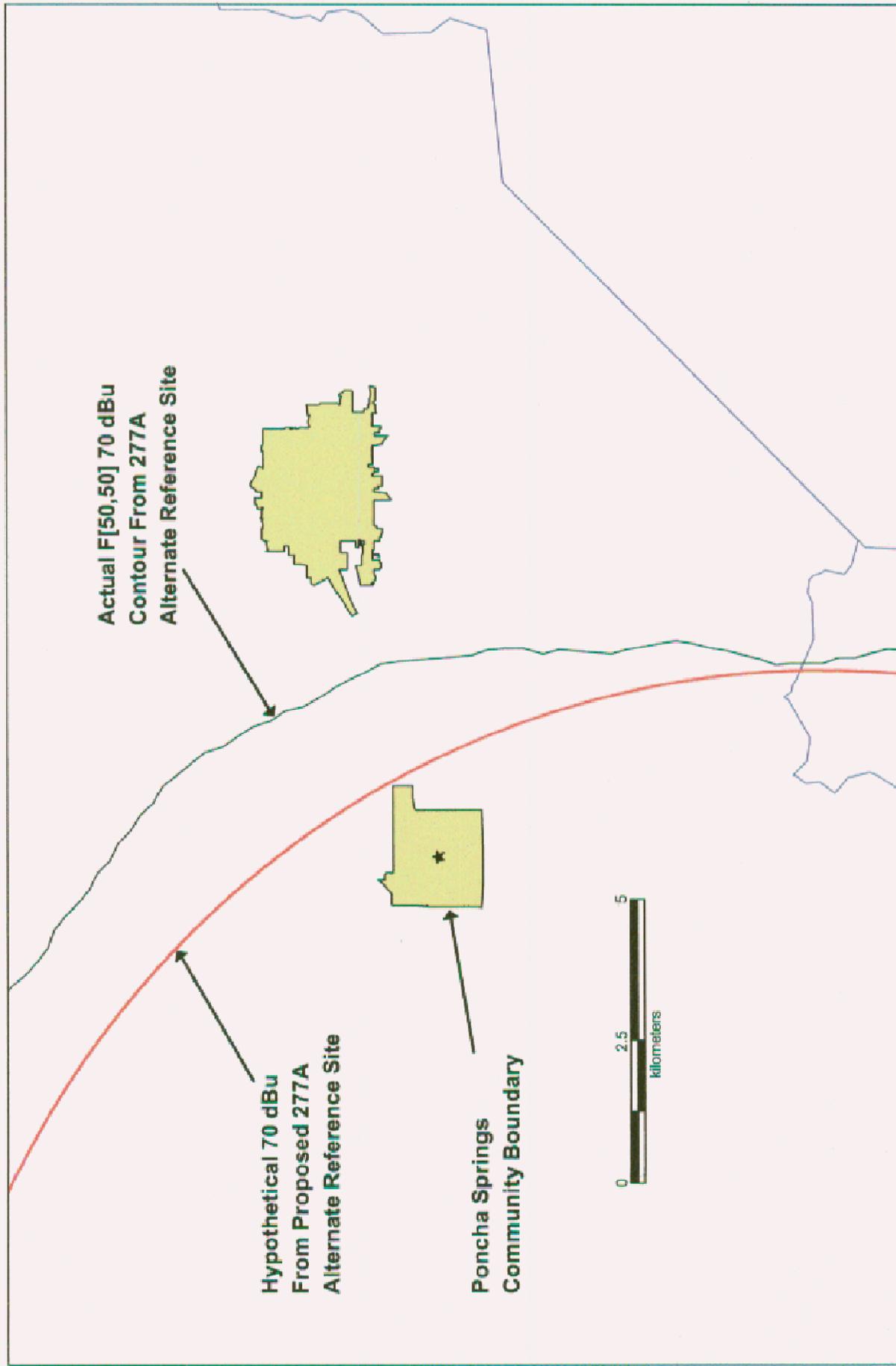
Call City, State Chan Class Freq kW Latitude Dist. Required
 Status Proponent File Number HAAT Longitude Azm. Clear (km)

 >>>>>>> Study For Channel 277 103.3 mHz <<<<<<<<

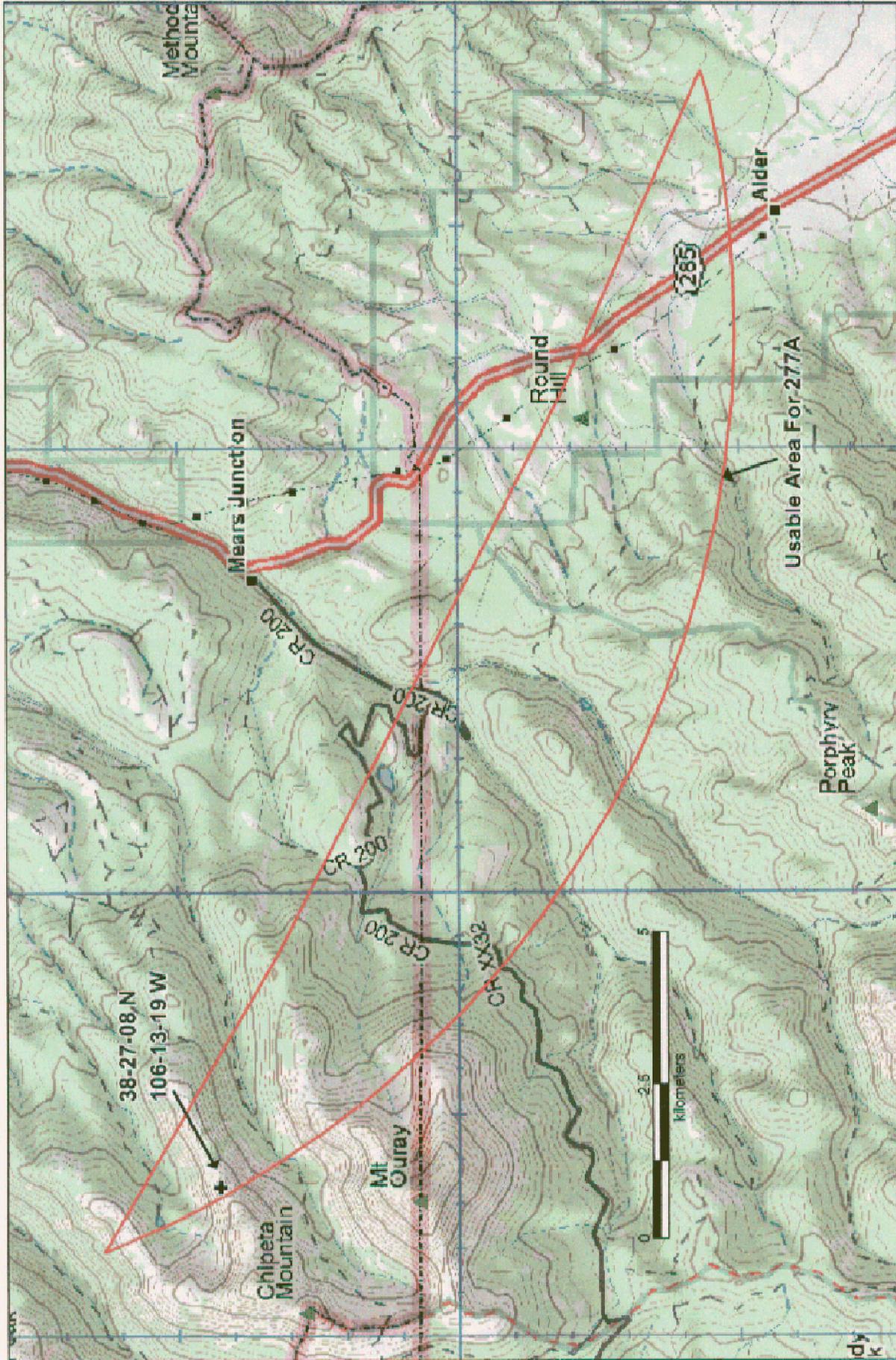
ALLOCR	PONCHA SPRINGS, CO	277 A	103.3		38-30-42	14.2	115	
ADD		Dockt-03-57		0	106-04-42	62.2	-100.8	SHORT
ALLOCR	DENVER, CO	278 C	103.5		39-43-50	165.58	165	
DEL		RM-10630		0	105-14-07	30.7	+0.58	CLOSE
KREFX	DENVER, CO	278 C	103.5	100.	39-43-50	165.61	165	
LIC	Fac. No. 29731	BLH-4823		320	105-14-07	30.7	+0.61	CLOSE
KREFX	DENVER, CO	278 C	103.5	100.+	39-43-59	165.81	165	
APP	Fac. No. 29731	BPH-20030424AAO		487	105-14-10	30.6	+0.81	CLOSE
ALLOC	ASPEN, CO	276 C3	103.1		39-13-33	100.9	89	
RSV		RM-9890		0	106-50-00	328.5	+11.9	CLOSE
ALLOCR	DENVER, CO	278 C0	103.5		39-43-50	165.6	152	
ADD		RM-10630		0	105-14-07	30.7	+13.6	CLOSE
KPRU	DELTA, CO	277 C2	103.3	12.0	38-52-40	180.7	166	
LIC	Fac. No. 84439	BLED-20010411AAF		301	108-13-32	285.8	+14.7	CLOSE
KBIQ	MANITOU SPRINGS, CO	274 C	102.7	57.0	38-44-43	122.9	95	
LIC	Fac. No. 73073	BLH-19960503KA		695	104-51-41	74.2	+27.9	CLEAR
KSPNFM	ASPEN, CO	276 A	103.1	3.00	39-13-33	101.0	72	
LIC	Fac. No. 43884	BMLH-20010913AAJ		-26	106-50-00	328.5	+29.0	CLEAR
ALLOC	LA VETA, CO	277 A	103.3		37-30-54	149.2	115	
VAC	Fac. No. 122057	RM-9510		0	105-00-18	133.8	+34.2	CLEAR



Map Showing 100 % Community Coverage From Proposed Alternate Reference Site

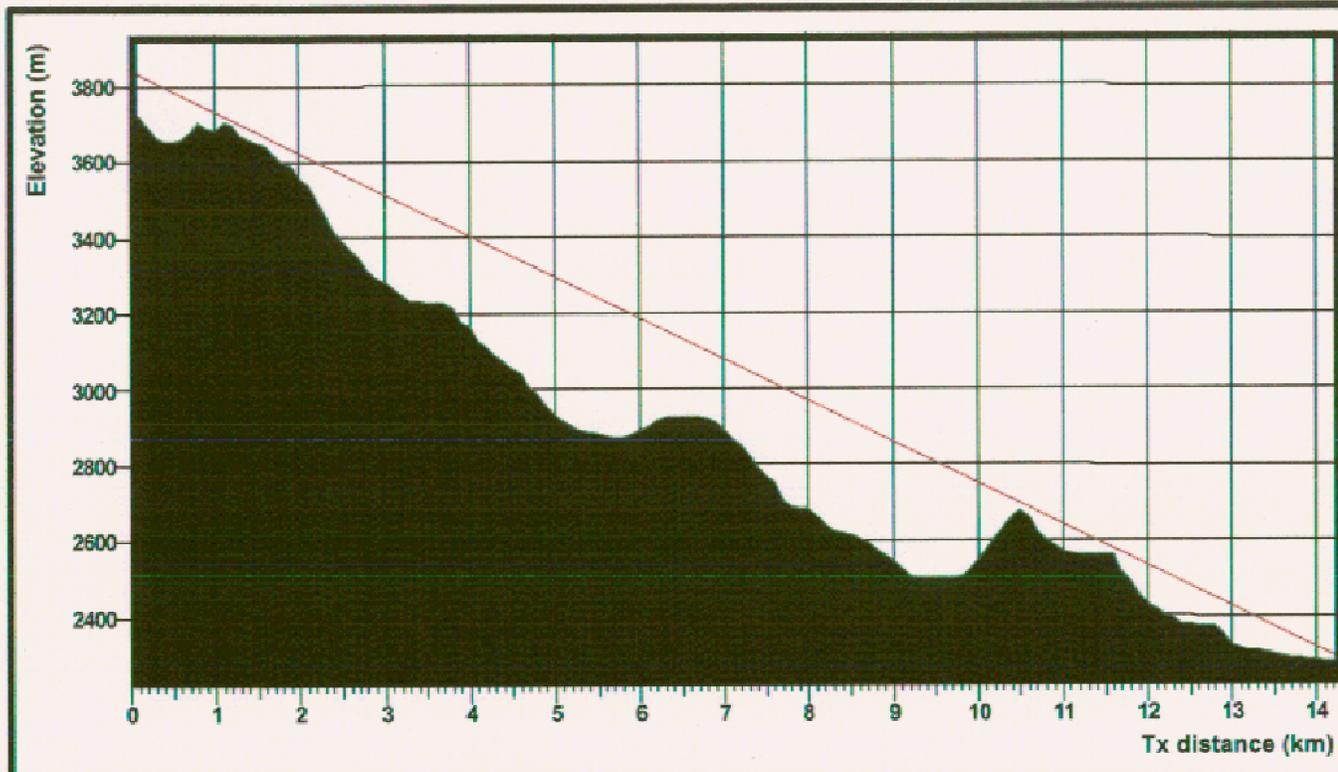


Map Showing 100 % Community Coverage From Proposed Alternate Reference Site



Proposed Hypothetical Site Clear of KRFX Class C

Link Study:Poncha Springs Center of Town



SIGNAL®

Prop. model: FCC-FCC
 Time: 50.00 % Loc.: 50.00 %
 Margin: 0.00 dB
 Climate: Continental Temperate
 Atm. factor: none
 K factors: 1.333, 1.000, 1.000

Reliability Analysis
 Fade outage method: ITU-R 530-7
 ITU-R terrain type: Inland
 ITU-R refract. grad.: 20.0 %
 External interf.: -150.0 dBmW
 Dispersive fade margin: 80.0 dB
 Ant. spacing (diversity): 0.0 m
 Rain outage method: ITU-R Rec 530-7
 Rain region: f

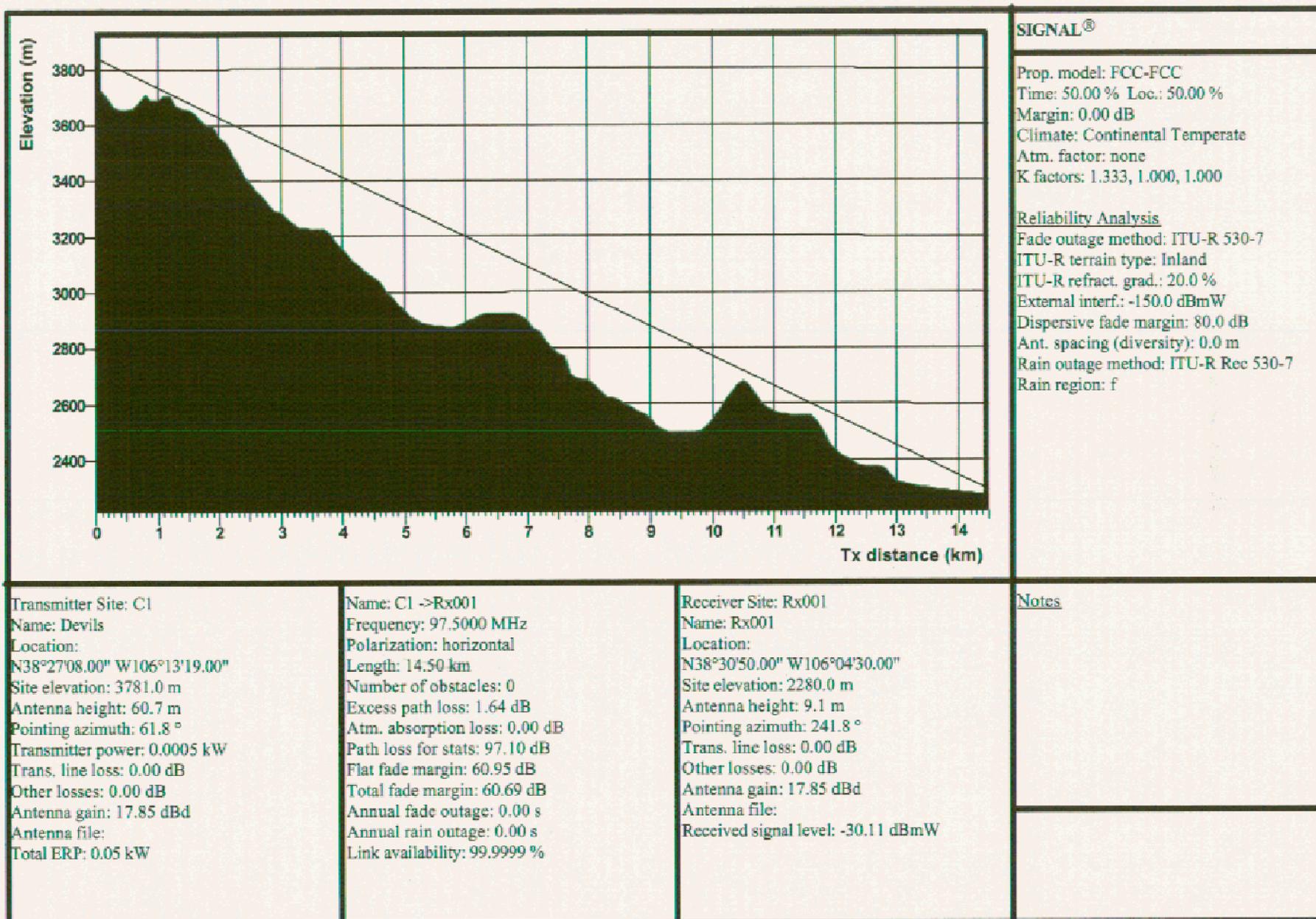
Transmitter Site: C1
 Name: Devils
 Location:
 N38°27'08.00" W106°13'19.00"
 Site elevation: 3781.0 m
 Antenna height: 60.7 m
 Pointing azimuth: 61.9 °
 Transmitter power: 0.0005 kW
 Trans. line loss: 0.00 dB
 Other losses: 0.00 dB
 Antenna gain: 17.85 dBd
 Antenna file:
 Total ERP: 0.05 kW

Name: C1 ->Rx001
 Frequency: 97.5000 MHz
 Polarization: horizontal
 Length: 14.32 km
 Number of obstacles: 0
 Excess path loss: 1.62 dB
 Atm. absorption loss: 0.00 dB
 Path loss for stats: 96.96 dB
 Flat fade margin: 61.09 dB
 Total fade margin: 60.82 dB
 Annual fade outage: 0.00 s
 Annual rain outage: 0.00 s
 Link availability: 99.9999 %

Receiver Site: Rx001
 Name: Rx001
 Location:
 N38°30'46.00" W106°04'36.00"
 Site elevation: 2275.0 m
 Antenna height: 9.1 m
 Pointing azimuth: 241.9 °
 Trans. line loss: 0.00 dB
 Other losses: 0.00 dB
 Antenna gain: 17.85 dBd
 Antenna file:
 Received signal level: -29.97 dBmW

Notes

Link Study: Poncha Springs Community Coordinates

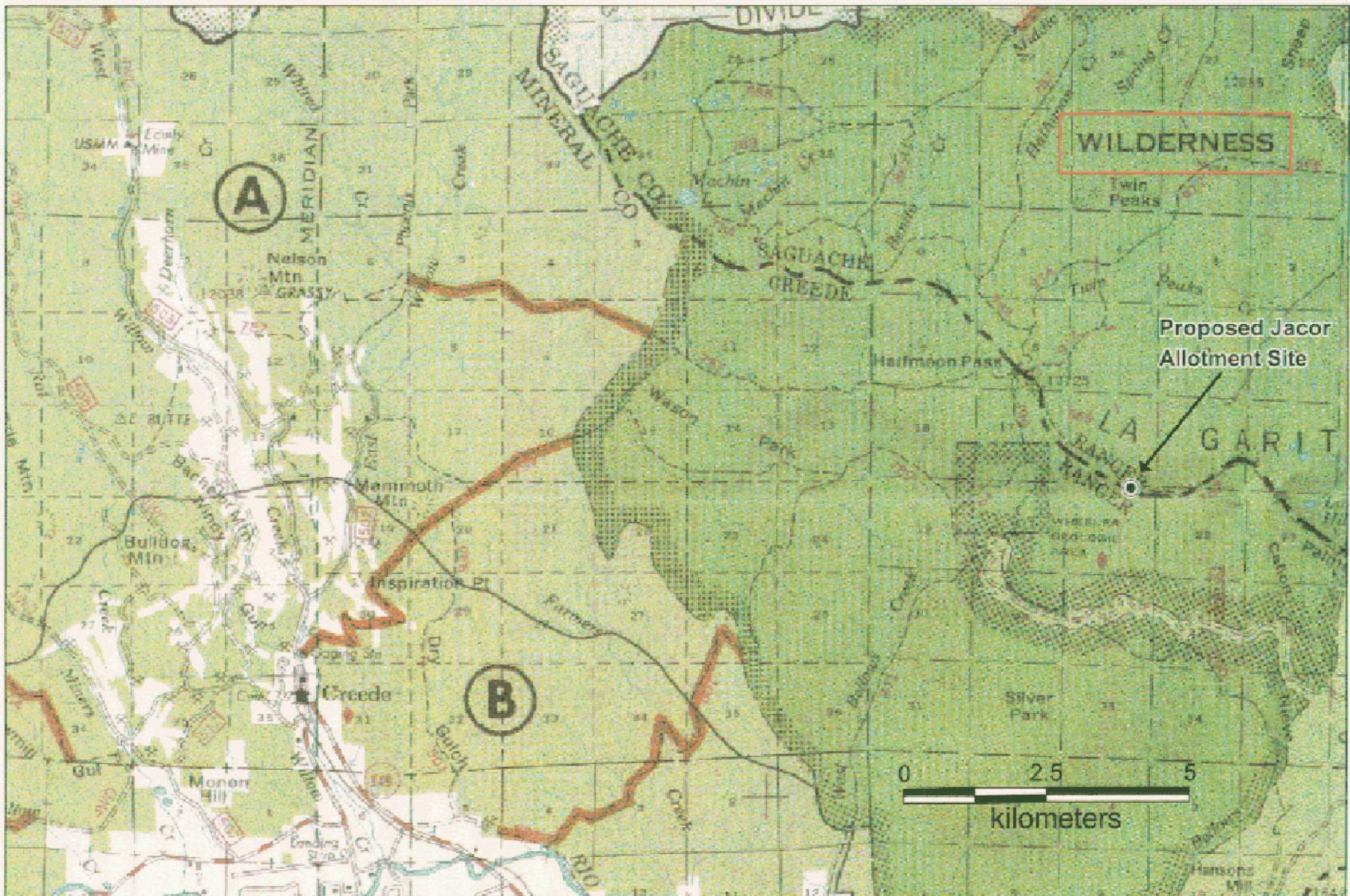


Technical Narrative

I have examined the proposed allotment of 261C2 at Creede, Colorado as described in Jacor's petition received by the FCC on May, 19, 2003. It has two significant flaws:

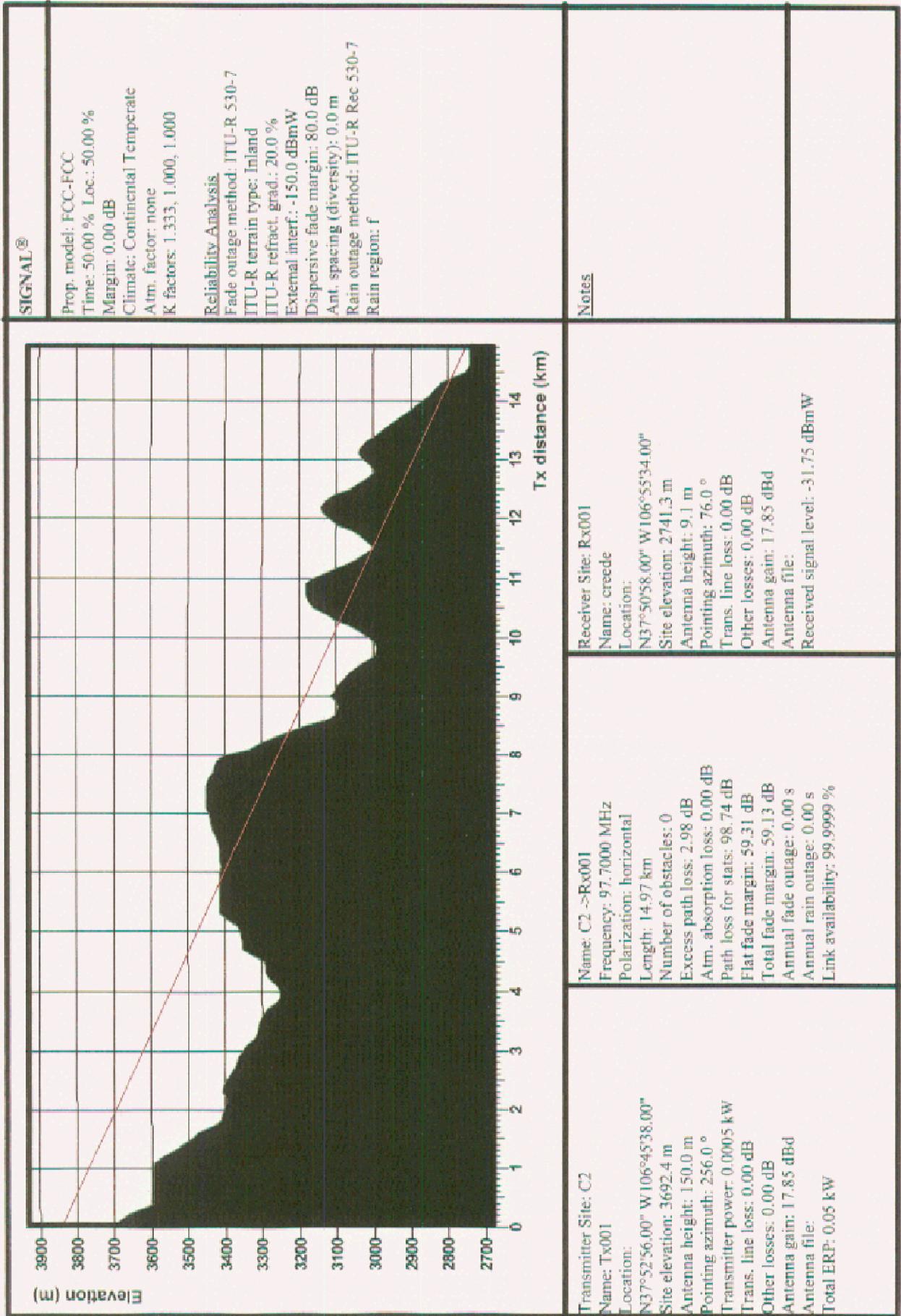
1. The reference site is in a protected Wilderness area of the Rio Grande National Forest. While the US Forest Service grants permission for electronic sites, no new construction is approved in the Wilderness areas and other areas managed as Wilderness. Forest Service rules forbid motorized vehicles, mechanical equipment and even bicycles in these areas.
2. The reference site does not enjoy line of sight to the community of Creede.

Please refer to the attached map, a publication of the U.S. Forest Service and to the terrain profile which assumes a 150 AGL meter tower at the reference point and a 9.1 meter AGL receive antenna.



US Forest Service Map of Rio Grande National Forest
Site is in Wilderness Area - "Motorized vehicles and mechanized
equipment, including bicycles, prohibited" - USFS Rules

Link study: 261C2 Creede, Colorado



SIGNAL®

Prop. model: FCC-FCC
 Time: 50.00 % Loc.: 50.00 %
 Margin: 0.00 dB
 Climate: Continental Temperate
 Atm. factor: none
 K factors: 1.333, 1.000, 1.000

Reliability Analysis
 Fade outage method: ITU-R 530-7
 ITU-R terrain type: Inland
 ITU-R refract. grad.: 20.0 %
 External interf.: -150.0 dBmW
 Dispersive fade margin: 80.0 dB
 Ant. spacing (diversity): 0.0 m
 Rain outage method: ITU-R Rec 530-7
 Rain region: f

Notes

Receiver Site: Rx001
 Name: creede
 Location:
 N37°50'58.00" W106°55'34.00"
 Site elevation: 2741.3 m
 Antenna height: 9.1 m
 Pointing azimuth: 76.0 °
 Trans. line loss: 0.00 dB
 Other losses: 0.00 dB
 Antenna gain: 17.85 dBd
 Antenna file:
 Received signal level: -31.75 dBmW

Name: C2 ->Rx001
 Frequency: 97.7000 MHz
 Polarization: horizontal
 Length: 14.97 km
 Number of obstacles: 0
 Excess path loss: 2.98 dB
 Atm. absorption loss: 0.00 dB
 Path loss for stats: 98.74 dB
 Flat fade margin: 59.31 dB
 Total fade margin: 59.13 dB
 Annual fade outage: 0.00 s
 Annual rain outage: 0.00 s
 Link availability: 99.9999 %

Transmitter Site: C2
 Name: Tx001
 Location:
 N37°52'56.00" W106°45'38.00"
 Site elevation: 3692.4 m
 Antenna height: 150.0 m
 Pointing azimuth: 256.0 °
 Transmitter power: 0.0005 kW
 Trans. line loss: 0.00 dB
 Other losses: 0.00 dB
 Antenna gain: 17.85 dBd
 Antenna file:
 Total ERP: 0.05 kW

CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 6th day of June, 2003, to the offices of the following:

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Traci Maust