

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments, FM Broadcast Stations
(Boulder Town, Levan, Mt. Pleasant and
Richfield, UT)

MB Docket No. 04-258

RM-11000
RM- 11149

RECEIVED

JUN 23 2006

To: Office of the Secretary
Attn: Assistant Chief, Audio Division, Media Bureau

Federal Communications Commission
Office of Secretary

PETITION FOR PARTIAL RECONSIDERATION

SANPETE COUNTY BROADCASTING CO., the current licensee of Station KLGL (formerly KCYQ), Richfield, Utah (Facility ID 41895), and successor-in-interest to **MID-UTAH RADIO, INC.** ("*Mid-Utah*"),^{1/} by its undersigned counsel, and pursuant to §§ 1.429(d) and 1.4(b)(1) of the Commission's rules, hereby respectfully petitions the Commission for partial reconsideration of the *Report and Order*, DA 05-956, released in the above-captioned proceeding on May 5, 2006 (the "*Decision*").^{2/} In support hereof, the following is shown:

^{1/} On March 1, 2006, Sanpete County Broadcasting Co. acquired KCYQ in a station swap with Mid-Utah pursuant to Commission consent in BALH-20051228ACL and BALH-20051228ACH). To minimize confusion, references will be made to the original licensee (Mid-Utah) and former call-sign (KCYQ) when referring to the current licensee and call sign of the FM station operating on Channel 229 at Richfield and assigned the Facility ID No. 41895.

^{2/} See summary of the Decision at 71 Fed. Reg. 29886 (May 24, 2006). The instant Petition is timely filed within 30 days of such publication. It is noted that Micro Communications, Inc. ("*Micro*"), the petitioner below, filed a Petition for Reconsideration in this proceeding on June 5, 2006. Mid-Utah intends to file an Opposition to Micro's Petition for Reconsideration in accordance with §1.429(f) of the Commission's Rules.

I. Preliminary Statement

1. Mid-Utah requests reconsideration solely with respect to the Decision's denial of Mid-Utah's Counterproposal for the allotment of Channel 229C to Mount Pleasant, Utah, as that community's first local service. As will be demonstrated herein, the analysis of Mid-Utah's Counterproposal set forth in the Decision contained two substantial and material errors of fact that led to a wrong ultimate conclusion. First, it was erroneously determined that white area would be created by Mid-Utah's proposal to move KCYQ to serve Mt. Pleasant on Channel 229C. Second, it was erroneously determined that Mid-Utah's proposed transmitter site is situated in the Manti-La Sal National Forest. Based on these two "facts", the Decision determined that the creation of white area is not in the public interest, and a proposed transmitter site located on U.S. Forest Service property cannot not be presumed to be available, and therefore, denied Mid-Utah's Counterproposal. Given the substantial and material errors of fact that underly this part of the Decision, partial reconsideration is both justified and warranted, as more specifically set forth below.

II. No White Area is Created by Mid-Utah's Counterproposal.

2. As noted, the Decision concluded that Mid-Utah's Counterproposal for the allotment of Channel 229C at Mount Pleasant, Utah, creates a white area of 512 square kilometers with a population of 1,103 persons. However, that conclusion is plainly wrong; Mid-Utah's Counterproposal will not create any white area at all, as the Engineering Statement of Kevin Terry ("Terry Statement"), appended hereto as **At-**

achment No. 1, well demonstrates. As Mr. Terry observes, it appears that a mistake was made with respect to the station that was analyzed for the staff's services study, and as a result of that mistake, it was wrongly determined that white area would be created.^{3/} However, as shown in Exhibits 1 and 2 at Attachment No. 1, when the proper site and parameters are applied to Mid-Utah's Counterproposal, no white area, at all, will be created. Although some gray area will be created, importantly, no population is contained in that gray area. Id.

3. Given that an erroneous factual analysis of service loss led to the Decision's equally wrong conclusion that Mid-Utah's Counterproposal is not in the public interest, reconsideration of this portion of the Decision is well justified. Indeed, on reconsideration, a finding should be made that Mid-Utah's Counterproposal is indeed in the public interest because it will provide first local service to the community of Mt. Pleasant, as further discussed in Section IV below.

III. Mid-Utah's Proposed Transmitter Site is Not Located in a National Forest.

4. Contrary to the staff's finding reflected in the Decision, Mid-Utah's proposed transmitter site is not located in the Manti – LaSal National Forest. Rather, it is on privately held property situated south, southwest of the boundary of the Manti-La Sal National Forest. See **Attachment No. 1** and **Exhibit 3** thereto. To further verify

^{3/} Mr. Terry observes that as a probable result of a swap in transmitter sites, a swap in call signs and a swap in station ownership between the FM station operating on Channel 249 at Elsinore, UT (Facility ID 72224) and the FM station operating on Channel 229 at Richfield (Facility ID 41895), the staff mistakenly analyzed loss data relating to Channel 249 at Elsinore, instead of correctly analyzing loss data relating to Channel 229 at Richfield. Attachment No. 1, pp 2-3.

the correct location of the proposed site, Mid-Utah's representative consulted the County Recorder of Sanpete County, Utah, Reed Hatch, who has supplied a declaration at **Attachment No. 2**, hereto, confirming that Mid-Utah's proposed site is on private property.⁴ Moreover, Mid-Utah has advised undersigned counsel that reasonable assurance of the availability of the proposed transmitter site has been obtained from the site owner.

5. In view of the foregoing facts, reconsideration of the Decision's determination that Mid-Utah's proposed site is presumptively unavailable must be granted. And, without question, Mid-Utah's proposed transmitter site should be found suitable for the allotment of Channel 229C to Mount Pleasant, Utah.

IV. Good Cause for Reconsideration has been Demonstrated.

6. It is well established that reconsideration is warranted only if the petitioner sets forth error of fact or law, or presents new facts or changed circumstances which raise substantial or material questions of fact which otherwise warrant reconsideration of the prior action. *See, Augusta, Kentucky*, DA-0612, released January 6, 2006. As demonstrated with particularity in Sections II and III above and in the Attachments hereto, two substantial and material errors of fact created the basis for the Decision. Therefore, fairness, equity and the paramount public interest require correction of these errors on reconsideration and a re-analysis of Mid-Utah's Counterproposal in view of such corrections.

⁴ Reasonable assurance of the availability of the property for transmitter site use has been obtained from the site owner.

7. It is respectfully submitted that such re-analysis should result in a reversal of this portion of the Decision and a grant of Mid-Utah's Counterproposal, regardless of whether reconsideration is granted to Micro. That is because Mid-Utah's Counterproposal is wholly superior to Micro's proposal under the Commission's FM allotment policies. Mid-Utah creates a first local service (Priority 3), as contrasted with Micro's Priority 4 status, at best.^{5/}

V. Conclusion.

7. The point here is simple and need not be belabored. Reconsideration of the Decision's denial of Mid-Utah's Counterproposal is fully justified by the fact that it was based upon two material factual errors, which, if corrected, would lead to a completely different outcome. Indeed, it is respectfully submitted that there is but one conclusion that can be reached: The denial of Mid-Utah's Counterproposal to allot Channel 229C to Mount Pleasant, Utah, should be reversed, and the Counterproposal should be granted because of its superior public interest benefits.

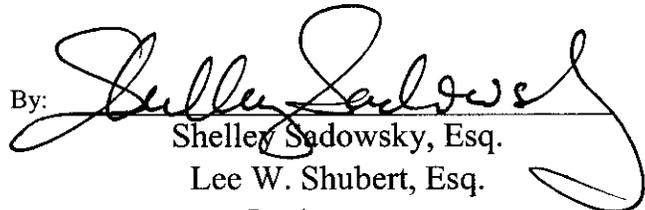
^{5/} The FM allotment priorities are (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

WHEREFORE, for the reasons set forth above, Mid-Utah respectfully requests reconsideration of the Decision denying Mid-Utah's Counterproposal, reversal of the Decision in that respect, and grant of Mid-Utah's Counterproposal to re-allot Channel 229C to Mt. Pleasant, Utah, for use by Station KCYQ (Facility ID 41895).

Respectfully submitted,

MID-UTAH RADIO, INC.

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Tel: 202-625-3719; Fax: 202-295-1120

By: 
Shelley Sadowsky, Esq.
Lee W. Shubert, Esq.
Its Attorneys

June 23, 2006

ATTACHMENT NO. 1

ENGINEERING STATEMENT
In Support of Mid-Utah Radio, Inc.'s
Petition for Partial Reconsideration
MB Docket 04-258

Introduction:

This Engineering Statement is offered in support of a Petition for Partial Reconsideration filed by San Pete County Broadcasting Co., successor-in-interest to Mid-Utah Radio, Inc. with respect to the Audio Division, Media Bureau's *Report and Order*, issued in MB Docket No. 04-258 (rel. May 5, 2006) ("*R&O*").

As a matter of background, on September 16, 2004, Mid-Utah timely filed a counterproposal in the referenced proceeding, proposing that Channel 231C be allocated to Boulder Town, Utah, at coordinates N37-54-30, W111-25-20, as that community's first local service. At the time the counterproposal was filed, Channel 231C at Boulder Town was shortspaced to the licensed facilities of KCYQ 229C Richfield, Utah (see BLH-19961107KA), operating at a site called Monroe Peak. In order to eliminate this conflict, Mid-Utah proposed the deletion of Channel 229C from Richfield, UT, and re-allocation of Channel 229C to Mount Pleasant, UT, as that community's first local service at coordinates N39-37-52, W111-19-47, for KCYQ's use. This counterproposal conflicted with the Petition for Rulemaking submitted by Micro Communications, Inc. ("Micro"), to add Channel 229C at Levan, Utah, and was accepted by the Commission as a valid counterproposal to the Notice of Proposed Rulemaking in the instant proceeding.

On August 3, 2005, KCYQ submitted FCC Application Form 302 (BLH-20050803AAF) to cover Construction Permit BPH-20030304AAQ, and moved its main antenna site from Monroe Peak to Barton Peak at coordinates N39-19-17, W111-46-11. Contemporaneously, KLGL 248C Richfield, Utah (FCC Facility ID #72224), filed FCC Application Form 302 (BLH20050811ACJ) to cover Construction Permit BPH-20040621AAJ and moved its main antenna site from Barton Peak to Monroe Peak at coordinates N38-32-30, W112-03-31, in order to serve its new community of license of Elsinore, Utah, pursuant to MB Docket 02-290. In effect, KCYQ and KLGL swapped sites. And, they also swapped call signs as of August 8, 2005. On February 24, 2006, the Commission granted

applications for the assignment of license for both stations which were then swapped by their respective licensees. Even though this swap occurred, and Sanpete County Broadcasting Co. is the current licensee of what was formerly KCYQ and is now KLGL, for the sake of simplicity, the original parties and call signs are retained throughout the remainder of this engineering statement.

On May 5, 2006, the Commission issued its R&O in the instant proceeding and dismissed Mid-Utah's counterproposal for two reasons. First, the Commission's analysis showed that a white area of 512 square kilometers with a population of 1,103 persons, and a gray area of 450 square kilometers with a population of 1,057 persons would be created as a result of deleting Channel 229C from Richfield. Second, the Commission's analysis found that Mid-Utah proposed a site for Channel 229C at Mount Pleasant inside the Manti-La Sal National Forest. The Commission noted that Mid-Utah did not mention that its transmitter site would be in the National Forest, or that it received permission from the National Forest Service to use a site in a National Forest. Consequently, the Commission did not presume that authority to build there would be granted.

As will be demonstrated herein, Mid-Utah's counterproposal, in fact, does not create any white area. Some gray area will be created; however, no population lives in this gray area. The detriment associated with the creation of this gray area containing no population is more than outweighed by the benefit of providing first local transmission service to the 2,707 persons of Mount Pleasant. Moreover, with respect to Mid-Utah's proposed site for Channel 229C at Mount Pleasant being located inside the National Forest, Mid-Utah has verified with the Sanpete County Recorder's office that the proposed site is, unequivocally, *not* located in the National Forest.

White and Grey Area Concerns:

In the R&O, the Commission stated that its analysis showed a white area and gray area containing substantial population would be created as a result of deleting Channel 229C from Richfield. It is the undersigned's belief that the Commission Staff inadvertently analyzed the wrong station while conducting its own remaining services study. It is possible that as a result of the above-referenced transmitter site swap, call letter swap, and ownership swap between KCYQ and KLGL, the Staff incorrectly analyzed the loss area that would be created if Channel 249C were deleted from

Elsinore instead of Channel 229C being deleted from Richfield. In other words, it appears likely that the staff incorrectly analyzed the current facilities assigned the call letters KCYQ on 249C at Elsinore (FCC Facility ID #72224) instead of the facilities on 229C at Richfield formerly assigned the call letters KCYQ (FCC Facility ID #41895), but now assigned the call letters KLGL.

Two additional exhibits have been generated for review relating to the loss area created upon the deletion of KCYQ 229C from Richfield (FCC Facility ID #41895) and its subsequent proposed allocation to Mount Pleasant. Exhibit 1 is a gain/loss study that demonstrates the proposed areas that Channel 229C will cover and will no longer cover as a result of the proposed relocation from Richfield to Mount Pleasant using the proposed site. Exhibit 2 is a remaining services study showing that no white area will be created as a result of the relocation to this site. This exhibit does show that some gray area will be created; however, it contains no population.

Proposed Mount Pleasant Site Concern:

The R&O notes that Mid-Utah failed to indicate that its proposed transmitter site for Channel 229C at Mount Pleasant, Utah, was located inside the Manti-La Sal National Forest. The reason that Mid-Utah did not make any such representation is because the proposed site, in fact, *is not* located on National Forest lands. Frequently, USGS maps are not accurate in depicting up-to-date public and private land boundaries. The USGS maps for the area near the proposed site erroneously indicate that the site is on National Forest land when, in fact, it is not. In preparing for this filing, Mid-Utah consulted with Reed Hatch of the Sanpete County Recorder's Office and Mr. Hatch reassured Mid-Utah that its proposed site is not located in the National Forest. Exhibit 3 is a map showing the proposed site in relation to privately held land and National Forest lands. As can be see on this map, the proposed site is located outside of the National Forest in Section 2. Although National Forest lands are located within Section 2, they are limited to the northeast quarter of Section 2 and the east half of the southeast quarter of Section 2. The proposed site is not located in either of these portions of the Section.

Conclusion

Upon addressing and correcting on reconsideration, the two errors made in its original analysis of Mid-Utah's Counterproposal, the only conclusion that can be reached is that Mid-Utah's Counterproposal is consistent with the Commission's allotment priorities and, in fact, is preferred over Micro's original proposal that was deemed defective in the R&O. That is because the Counterproposal produces a first local transmission service to the 2,707 residents of Mount Pleasant, UT, under Priority 3. No white area is created and only limited gray area containing no population is created as a result of the counterproposal. Finally, the proposed site for Channel 229C at Mount Pleasant, Utah, is not located on National Forest land. Furthermore, Mid-Utah has received reasonable assurance from the land owner of the site to be able to construct a high power FM facility. Accordingly, for all of the reasons stated above, the Commission's reconsideration of its denial of Mid-Utah's Counterproposal and its adoption thereof would be in the paramount public interest.

Respectfully submitted,

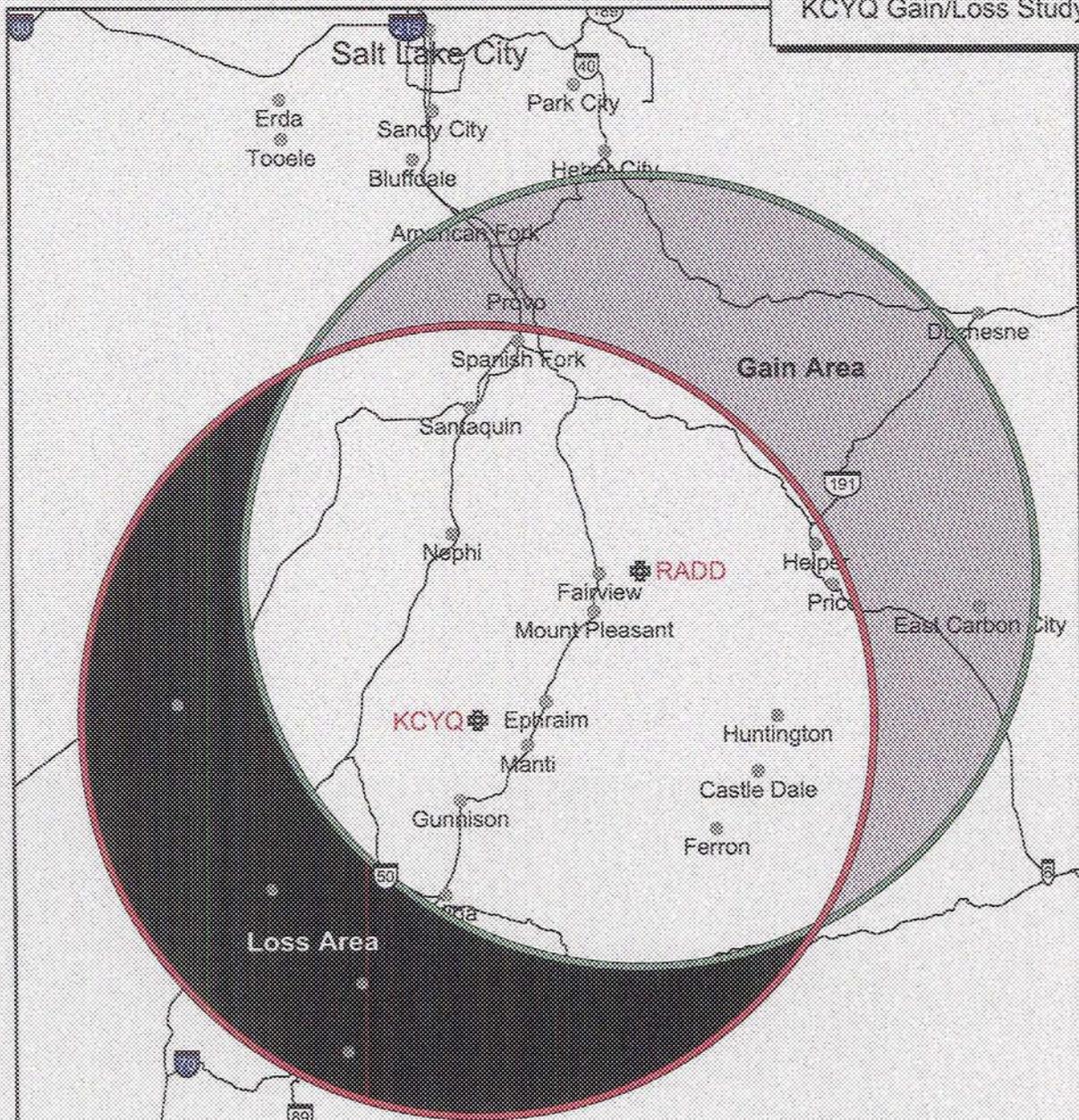


Kevin Terry
Consulting Engineer to Mid-Utah Radio, Inc.

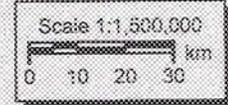
June 20, 2006
2835 E 3300 S
Salt Lake City, UT 84109

EXHIBIT 1

KCYQ Gain/Loss Study



<p>RADD 229C Mt. Pleasant</p> <p>Latitude: 39-37-52 N Longitude: 111-19-47 W ERP: 100.00 kW HAAT: 463.9 m Channel: 229 C Frequency: 93.7 MHz AMSL Height: 2911.22 m Elevation: 2655.72 m Horiz. Pattern: Omni Vert. Pattern: No Prop Model: None</p>	<p>KCYQ (currently assigned KLGL calls) BLH20050803AAF</p> <p>Latitude: 39-19-17 N Longitude: 111-46-11 W ERP: 66.00 kW HAAT: 718.0 m Channel: 229 C Frequency: 93.7 MHz AMSL Height: 2627.0 m Elevation: 2575.0 m Horiz. Pattern: Omni Vert. Pattern: No Prop Model: None</p>
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V-Soft Communications LLC ©

EXHIBIT 2

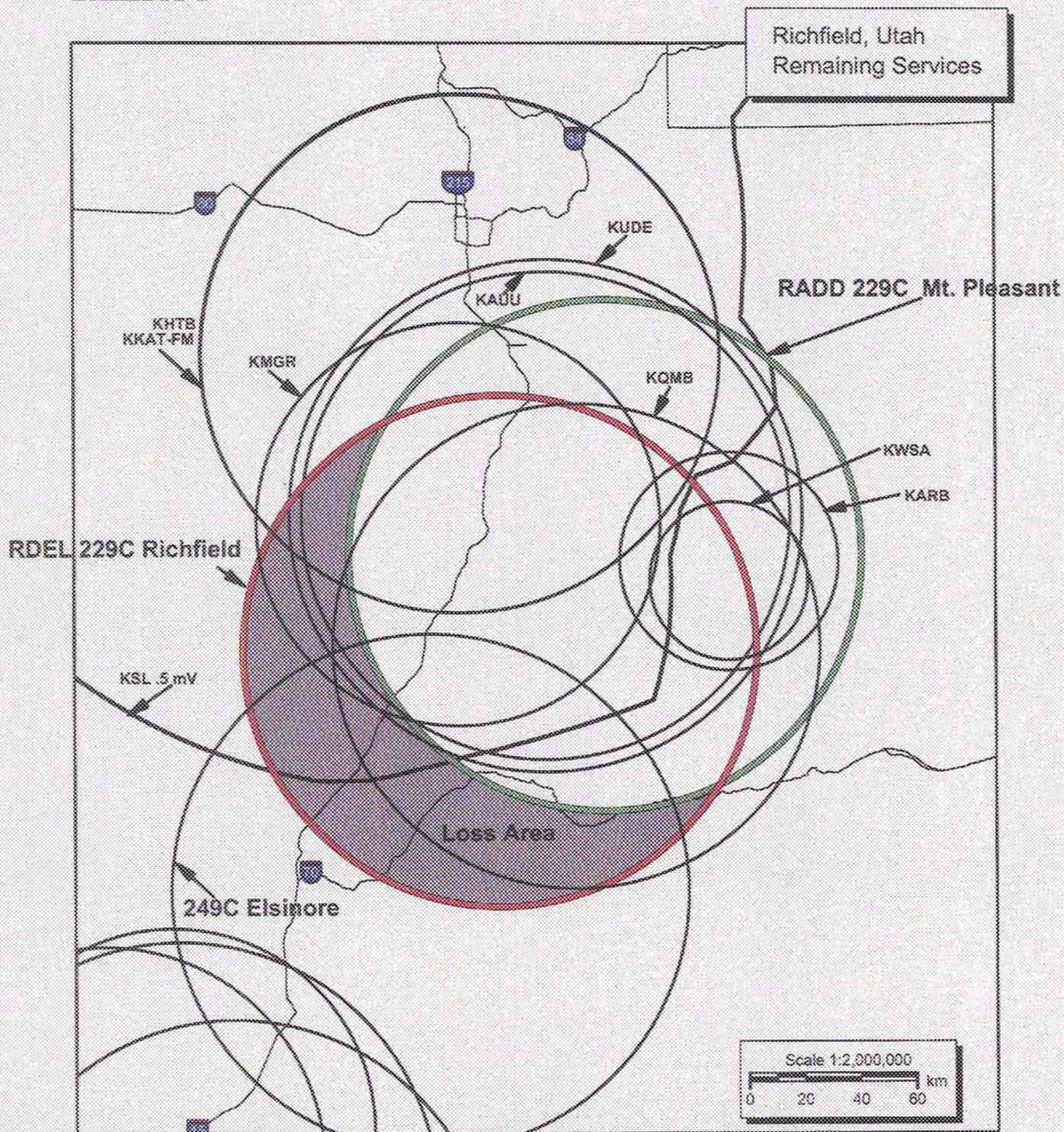
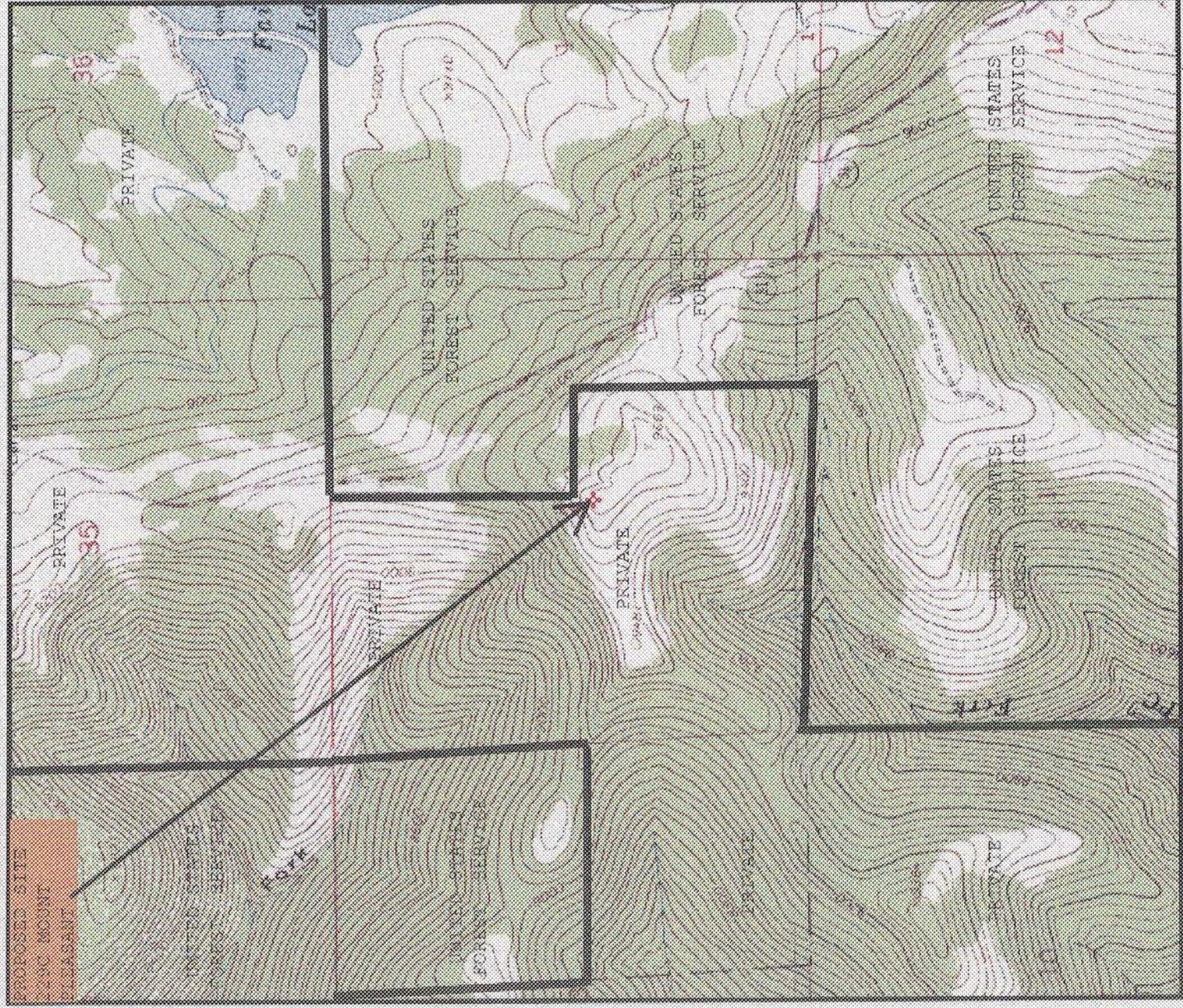


EXHIBIT 3



Map center is 39° 37' 52"N, 111° 19' 50"W (WGS84/NAD83)

Fairview Lakes quadrangle

Projection is UTM Zone 12 NAD83 Datum

M=12.862

G=-0.211

ATTACHMENT NO. 2

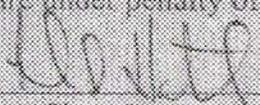
DECLARATION

I, Reed Hatch, hereby declare, as follows:

I am the County Recorder of Sanpete County, Utah. This statement is being provided to the Federal Communications Commission at the request of Sanpete County Broadcasting Co. and Mid-Utah Radio, Inc.

I have reviewed the land records of Sanpete County to determine the ownership of a parcel of property at Latitude 39 degrees 37 minutes 52 seconds and Longitude 111 Degrees 19 minutes 50 seconds (NAD 83).....Latitude 39 degrees 37 minutes 52 seconds and Longitude 111 degrees 19 minutes 47 seconds (NAD 27). I have determined that the specified parcel is privately owned, and is not owned or controlled by the U.S. Forest Service.

I declare under penalty of perjury that the foregoing statements are true and correct.

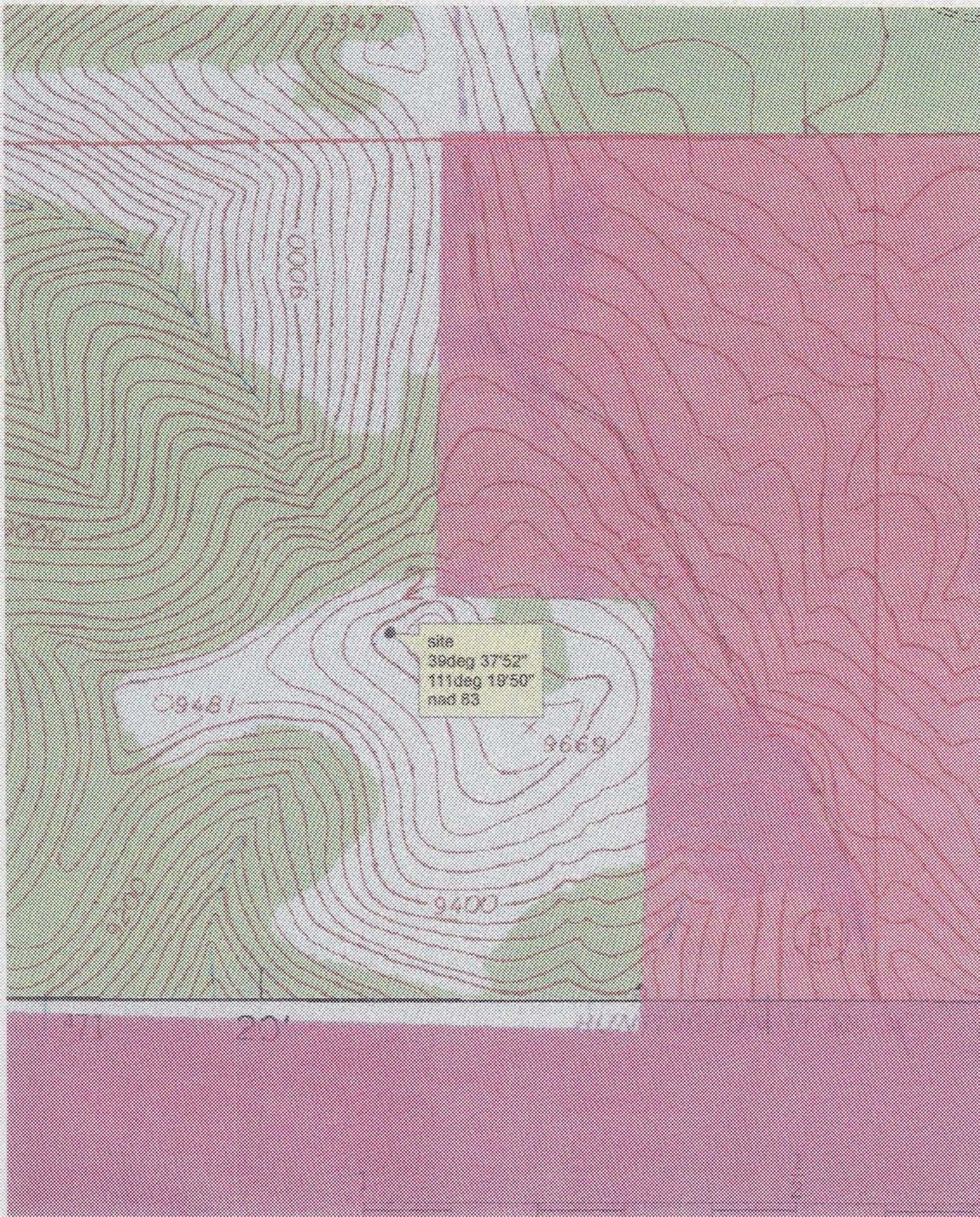


Signed

Executed on 6-21-06

Date

Reed Hatch
Sanpete County Recorder
Manti, Utah 84642



CERTIFICATE OF SERVICE

The undersigned, an employee of **KATTEN MUCHIN ROSENMAN LLP**, hereby certifies that the foregoing **PETITION FOR PARTIAL RECONSIDERATION** was mailed this date by First Class U.S. Mail, postage prepaid, and/or served electronically via e-mail to the following:

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By:


Karen Kelly

June 23, 2006

* Service via U.S. Postal Service.

† Service electronically, via e-mail only.