

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

RECEIVED

JUL - 6 2006

Federal Communications Commission  
Office of Secretary

In Re: Matter of )  
 )  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Boulder Town, Levan, Mount Pleasant )  
and Richfield, UT) )

MM Docket No. 04-258  
RM-11000  
RM-11149

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

**OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION**

Micro Communications, Inc. ("Micro"), by its attorney, pursuant to Section 1.106(g) of the Commission's rules, hereby respectfully opposes a "Petition for Partial Reconsideration" filed by Sanpete County Broadcasting Co. ("Sanpete") on June 23, 2006. As demonstrated herein, Sanpete's Petition must be dismissed as untimely or, in the alternative, denied as premised upon an erroneous factual assertion.<sup>1</sup>

The *Report and Order* to which Sanpete's Petition refers, DA 05-956, was released on May 5, 2006. Sanpete's claim of timeliness is based upon the fact that its subject Petition was filed within 30 days of publication of the Commission's *Report and Order* in the Federal Register on May 24, 2006. However, that is irrelevant.

Section 1.106(f) of the Commission's rules requires that a petition for reconsideration be filed within 30 days from the date of public notice of an action, as that date is defined in Section 1.4(b) of the rules. Section 1.4(b)(3) of the rules states as follows (emphases added):

<sup>1</sup> Zeta Holdings, LLC ("Zeta") succeeded to Micro's interests upon consummation of a *pro forma* assignment of license, BALH-20040415AEM on July 26, 2004. Micro's (now Zeta's) subject station, KCFM, Levan, Utah has since changed call letters to KQMB. Sanpete itself is the successor in interest to Mid-Utah Radio, Inc. (and its station has changed call signs from KCYQ to KLGL. To minimize confusion, the instant Opposition is filed in the name of Micro.

No. of Copies rec'd 084  
List A B C D E

For rulemakings of particular applicability, if the rulemaking document is to be published in the Federal Register **and the Commission so states in its decision**, the date of public notice will commence on the day of the Federal Register publication date. If the decision fails to specify Federal Register publication, the date of public notice will commence on the release date, **even if the document is subsequently published in the Federal Register.**

Nowhere did the subject *Report and Order* state that it was to be published in the Federal Register. Consequently, public notice of the *Report and Order* arose upon its release date of May 5 rather than upon the date when it subsequently appeared in the Federal Register. Thus, Section 1.106(f) of the rules required that any petition for reconsideration be filed no later than Monday, June 5 (and, indeed, Micro filed its own timely Petition for Reconsideration on that date). Therefore, Sanpete's subject Petition is fatally untimely and must be dismissed without consideration of its putative merits.

Even were Sanpete's Petition to be viable, it is premised upon an erroneous factual claim. The *Report and Order* had found that Mid-Utah's counterproposal would have created white and gray areas that would not result in a preferential arrangement of allotments and therefore would not be in the public interest. In its Petition, Sanpete challenges the staff's finding and then goes on to state: "Although some gray area will be created, importantly, no population is contained in that gray area."

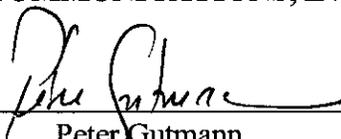
Submitted herewith is an engineering statement of Communications Technologies, Inc. which follows the same methodology used by Sanpete and demonstrates that the gray area Sanpete will create contains several communities and indeed is quite significantly populated. Thus, Sanpete's assertion that the staff erroneously charged it with creating populated gray area is itself patently in error. Under the Commission's allotment priorities, the creation of significant gray area is inherently detrimental to the public interest. In any event, the ground presented in Sanpete's Petition fails to rebut the major premise of the *Report and Order's* denial of its counterproposal. The error it alleges is nothing of the sort, and the basis for the staff's conclusion that its

counterproposal would disserve the public interest remains valid.

For the foregoing reasons, Sanpete's Petition must be dismissed as untimely or, even if considered on its merits, denied based upon its erroneous claim that the substantial gray area to be created by its counterproposal is unpopulated. That, in turn, will clear the way for Micro to implement the public interest benefits of its own rulemaking proposal upon grant of its petition for reconsideration.

Respectfully submitted,

**MICRO COMMUNICATIONS, INC.**

By:  \_\_\_\_\_  
Peter Gutmann  
Its Attorney

**Womble Carlyle Sandridge & Rice, PLLC**  
1401 I Street, NW, Seventh Floor  
Washington, DC 20005  
(202) 857-4532

July 6, 2006

**ENGINEERING STATEMENT CONCERNING  
PETITION FOR PARTIAL RECONSIDERATION  
SANPETE COUNTY BROACASTING, CO. KLGL(FM)  
MB DOCKET NO. 04-258  
AMENDMENT OF THE TABLE OF ALLOTMENTS  
FM BROADCAST STATIONS  
BOULDER TOWN, LEVAN, MT. PLEASANT AND  
RICHFIELD, UTAH**

**JULY 2006**

**ENGINEERING STATEMENT CONCERNING**  
**PETITION FOR PARTIAL RECONSIDERATION**  
**SANPETE COUNTY BROADCASTING, CO. KLGL(FM)**  
**MB DOCKET NO. 04-258**  
**AMENDMENT OF THE TABLE OF ALLOTMENTS**  
**FM BROADCAST STATIONS**  
**BOULDER TOWN, LEVAN, MT. PLEASANT AND RICHFIELD, UTAH**  
**JULY 2006**

**SUMMARY**

The following engineering statement has been prepared on behalf of **Micro Communications, Inc.** ("**Micro**"), licensee of FM broadcast station KQMB, Levan, Utah, in support of an opposition to a Petition For Partial Reconsideration in MB Docket No. 04-258 filed by Sanpete County Broadcasting Co. ("**Sanpete**")<sup>1</sup> in the above captioned proceeding. Sanpete's petition states that the Report And Order in MB Docket No. 04-258, released May 5, 2006, erred in stating 1) that white area would be created by Mid-Utah's proposal to move KCYQ to serve Mt. Pleasant, UT on Channel 229C and 2) the transmitter site was unavailable.

The affiant has reviewed Sanpete's Petition For Partial Reconsideration, including the accompanying engineering statement. The purpose of this statement is to demonstrate that Sanpete's characterization of the loss area associated with its proposed deletion of CH 229C at Richfield, Utha is in error and cannot be relied upon.

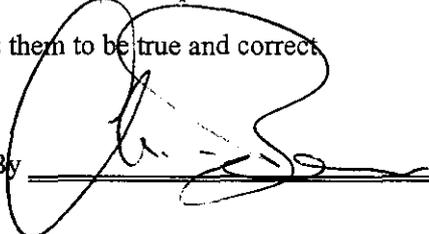
---

<sup>1</sup> Sanpete is the successor to Mid-Utah Radio, Inc.

Sanpete's Engineering statement, Exhibit 2, depicts the loss area associated with the deletion of CH 229C at Richfield in gray shading and depicts a polygon on the southwest side with one aural service provided by CH 249C, Elsinore, Utah. The engineering statement states the following in the first full paragraph on page 3, "This exhibit does show that some gray area will be created; however, it contains no population."

Figure 1, attached, is a map which depicts contour locations for key stations as depicted by Sanpete. Micro has no quarrel with Sanpete's depiction of the contours that describe the gray area. However, characterizing the area as unpopulated is clear error as shown on Figure 1. Population density and city names and locations were omitted by Sanpete on its Exhibits 1 & 2 but are shown on Figure 1. It is clear from map Figure 1 that multiple communities exist in the gray area and that there is significant population in the gray area. Figure 2 is an expanded Figure 1 which more clearly depicts the gray area. A total of 5,511 persons reside in the gray area which encompasses an area of 1,416 square kilometers.

The foregoing was prepared on behalf of **Micro Communications, Inc.** by Clarence M. Beverage of *Communications Technologies, Inc.*, Marlton, New Jersey, whose qualifications are a matter of record with the Federal Communications Commission. The undersigned certifies, under penalty of perjury, that the statements herein are true and correct of his own knowledge, except such statements made on information and belief, and as to these statements he believes them to be true and correct.

By 

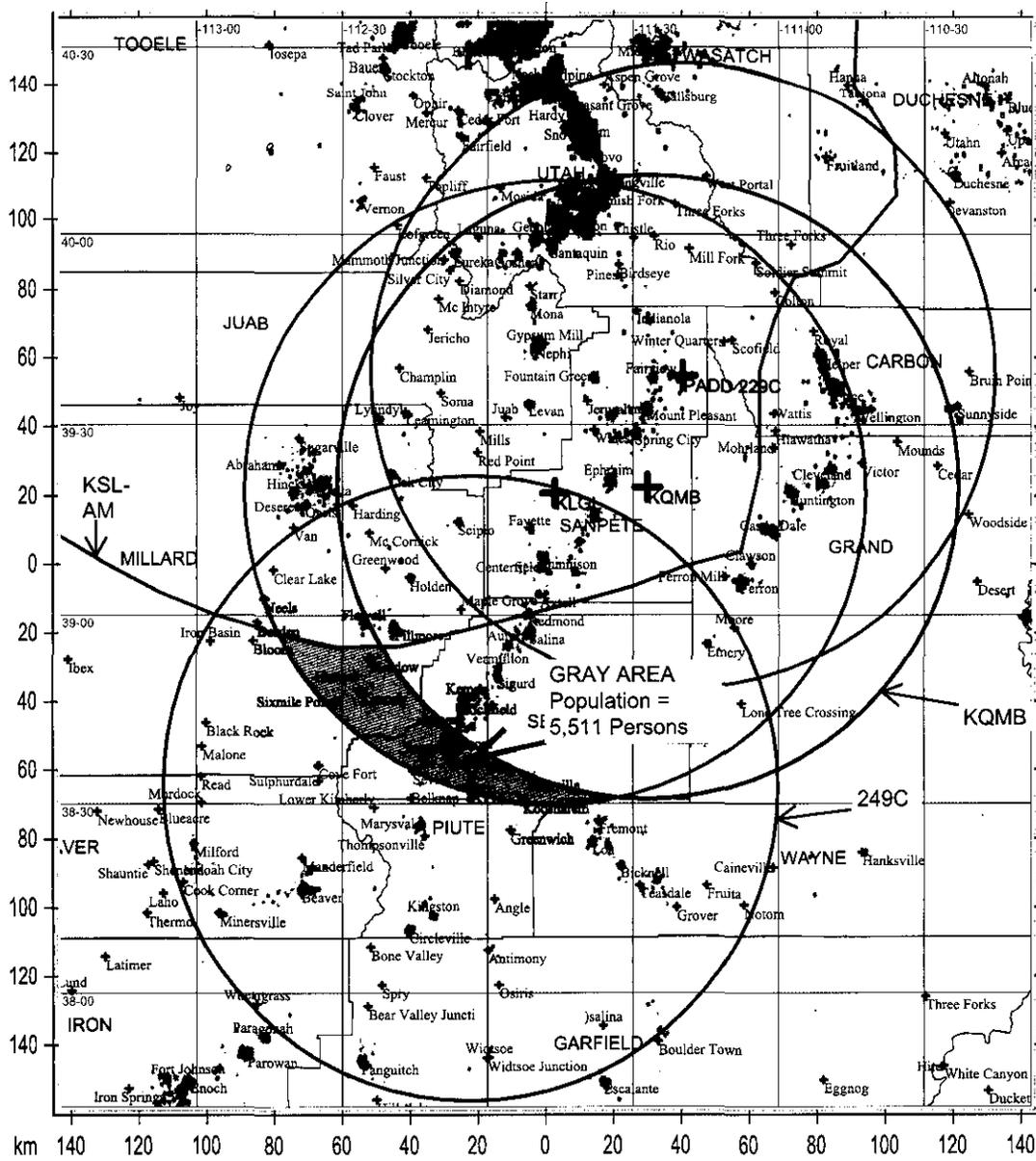
**Clarence M. Beverage**

*for Communications Technologies, Inc.*

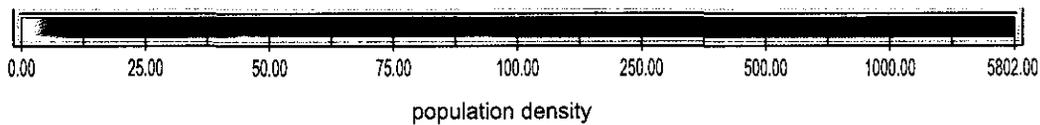
Marlton, New Jersey

July 5, 2006

SANPETE COUNTY BROADCASTING COMPANY - DUPLICATION OF GRAY AREA MAPPING

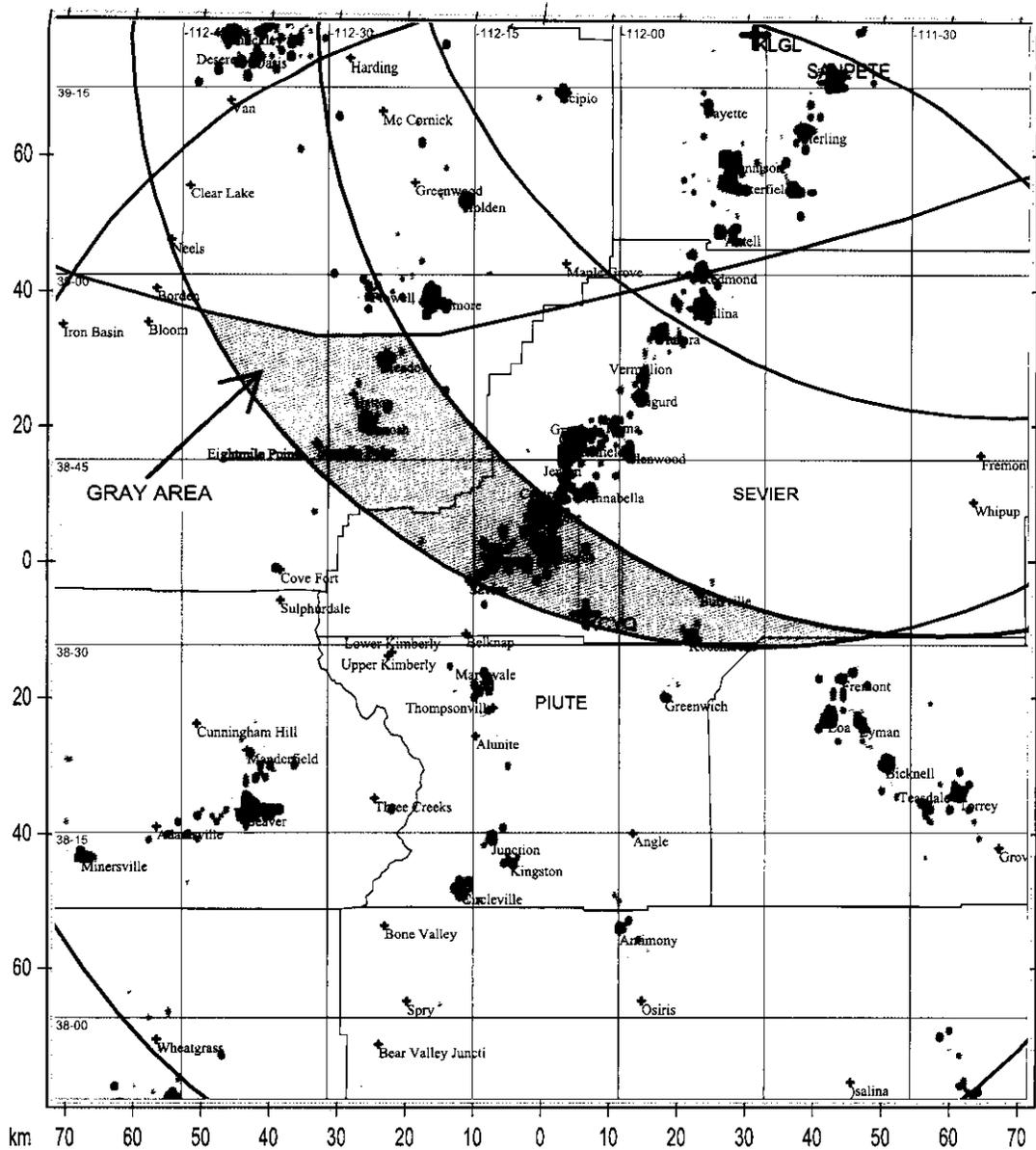


Communications Technologies, Inc. Marlton, New Jersey 08053

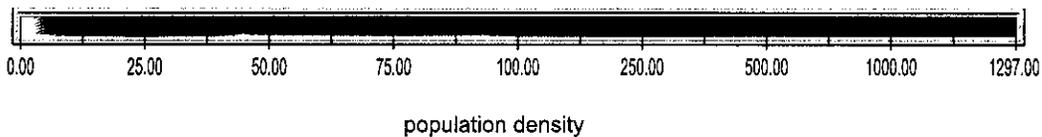


National Borders
  County Borders
  City Borders
  Lat/Lon Grid

SANPETE COUNTY BROADCASTING COMPANY - DUPLICATION OF GRAY AREA MAPPING



Communications Technologies, Inc. Marlton, New Jersey 08053



— National Borders    — County Borders    — City Borders    — Lat/Lon Grid

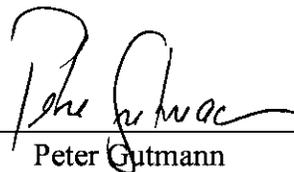
Map Scale: 1:1000000 1 cm = 10.00 km V/H Size: 158.19 x 142.91 km

FIGURE 2

**Certificate of Service**

I, Peter Gutmann, an attorney in the law firm of Womble Carlyle Sandridge & Rice, PLLC, do hereby certify that I have on this 6<sup>th</sup> day of July, 2006, caused copies of the foregoing Opposition to Petition for Partial Reconsideration to be mailed to the following by first-class United States mail, postage prepaid:

Shelley Sadowski, Esquire  
Lee W. Shubert, Esquire  
Katten Muchin Zavis Rosenman  
1025 Thomas Jefferson Street, NW  
East Lobby, Suite 700  
Washington, DC 20007-5201  
(counsel to Mid-Utah Radio, Inc.)



---

Peter Gutmann