

ORIGINAL

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

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AUG 21 2006

Federal Communications Commission
Office of Secretary

In Re: Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 04-258
Table of Allotments,)	RM-11000
FM Broadcast Stations.)	RM-11149
(Boulder Town, Levan, Mount Pleasant)	
and Richfield, UT))	

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

REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION

Micro Communications, Inc. ("Micro"), petitioner herein, by its attorney, pursuant to Section 1.429(g) of the Commission's rules, hereby respectfully replies to an August 7, 2006 Opposition of Sanpete County Broadcasting Co. ("Sanpete") to Micro's June 5, 2006 Petition for Reconsideration of the Commission's *Report and Order*, DA 06-956, released May 5, 2006, in which it had dismissed Micro's Petition for Rulemaking as defective for failure to have protected the licensed site of Sanpete's station KCYQ.¹

In its Opposition, Sanpete raises two points concerning (a) the applicability of the *Cut and Shoot* policy and (b) the alleged creation of white/gray loss areas. Neither is warranted.

In its Petition for Reconsideration, Micro had demonstrated that the Commission's policy in *Cut and Shoot, Texas*, 11 FCC Rcd 16383 (Media Bureau 1996), which the Commission cited as the basis for dismissal in its *Report and Order*, was not absolute, and cited *WKVE, Semora, North Carolina*, 18 FCC Rcd 23411 (2003) as an example in which the subsequent grant of a license

¹ Both parties and both stations' call signs have since changed. Zeta Holdings, LLC succeeded to Micro's interest upon consummation of a *pro forma* assignment of license, BALH-20040415AEM. Micro's (now Zeta's) subject station, KCFM, Levan, Utah has changed call letters to KQMB. KCYQ has changed call letters to KLGL and Sanpete is the successor-in-interest to Mid-Utah Radio, Inc. ("Mid-Utah"). To avoid confusion, all original parties and call signs are retained, except with respect to Sanpete, which filed the subject Opposition in its own name.

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application obviated the requirement to protect formerly licensed facilities. Sanpete devotes several pages to a detailed attempt to distinguish *WKVE* from the situation surrounding Micro's subject rulemaking. It goes without saying that no two cases are exactly alike. Micro did not contend that its situation was identical to that in *WKVE*, nor did it contend that *WKVE* served to overrule the general *Cut and Shoot* policy. Rather, Micro offered *WKVE* as an example of a situation in which the *Cut and Shoot* policy had been tempered, thereby demonstrating that the policy should not be applied with absolute rigidity.

Even so, Sanpete misreads the *Cut and Shoot* case. There, the Bureau did not create an unconditional policy of dismissing any rulemaking that was contingent upon further changes. Rather, the *Cut and Shoot* policy is limited by its very terms, as it only requires that "potential rulemaking proponents await the eventual licensing of facilities set forth in a construction permit before they may file a petition for rulemaking." *Cut and Shoot, supra.* at ¶5. Here, the Commission's *Report and Order* dismissed Micro's rulemaking petition not due to uncertainty over future licensing of permitted construction, but on a far different ground – that it was short-spaced to two allotments – Channel 246A at Beaver, Utah and Channel 244C at Mesquite, Utah. *Report and Order* at ¶4. However, as Micro pointed out in its September 13, 2004 Comments, Channel 246A at Beaver had already been replaced by Channel 259A, and the Commission's database reflected that change. *See, Dinosaur and Rangely, Colorado*, 19 FCC Rcd 10327, released June 10, 2004.² Channel 244C at Mesquite was a vacant channel with a mere hypothetical allotment site. Consequently, neither short-spacing fell within the *Cut and Shoot* policy of awaiting future **licensing**.

Even so, it is unseemly that Sanpete has repeatedly attempted to fault Micro for having failed to protect Sanpete's **own** licensed site. Mid-Utah had been granted a construction permit (BPH-20030304AAQ) on September 17, 2003 – one month before Micro filed its petition for

² The timing of the Beaver channel substitution is particularly relevant in light of the clarification provided in *WKVE* that adverse action on a pending upgrade request would not be taken when subsequent events **prior to staff review** resulted in a fully acceptable application. *WKVE, supra.* at ¶26. Here, it is clear that the Beaver channel substitution predated initial comments, much less any staff review of the subject rulemaking.

rulemaking – which was subsequently licensed in 2005. Thus, the Commission is presented with a factual situation in which Sanpete essentially argues against itself – its predecessor had obtained a construction permit which it presumably intended to build (and in fact did), but at the same time protested Micro’s rulemaking on the ground that it might not intend to proceed with its construction permit and therefore required continued protection of its licensed site. This is not the usual situation in which an outside party’s intentions are unclear and are beyond a rulemaking participant’s ability to control. Rather, Mid-Utah was well aware that it had every intention of building its permit (as in fact it did) and that there was no need to retain protection of the site of its former facilities. It defies logic (and is blatantly anticompetitive) for the very same party that is already building its new facilities to insist that superseded facilities remain entitled to full protection. The rationale behind the *Cut and Shoot* policy is to avoid the uncertainty of whether authorized facilities in fact will be built. *Id.*, at ¶ 4. Here, Mid-Utah itself was in control of the situation and had no reason to doubt its own intentions.

As Sanpete notes, the *Cut and Shoot* policy invites consideration of public interest matters sufficient to warrant consideration of a proposal which otherwise would violate the overall policy. Opposition at 7, citing *Cut and Shoot, supra.* at ¶5. However, Sanpete contends that Micro has made no countervailing public interest demonstration. On the contrary, Micro’s October 14, 2003 Petition for Rulemaking and September 13, 2004 Comments documented the extensive service gains KCFM would obtain from the proposed rulemaking, while having no adverse impact upon the service rendered by KCYQ. Thus, Sanpete’s claim that Micro made no countervailing public interest demonstration is simply incorrect.

Sanpete’s second contention is that “Micro’s proposal creates a substantial amount of new white and gray areas.” Opposition at 7. Its assertion is based upon an engineering statement which claims enormous amounts of both white area (1,450 square kilometers) and gray areas (1,200 square kilometers) which, although currently unpopulated, allegedly have a large transient population of interstate vehicular traffic.

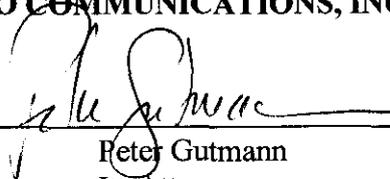
Unfortunately, Sanpete's engineering claim is wholly false. Submitted herewith is an engineering statement of Communications Technologies, Inc. which notes that Sanpete's claim curiously is based upon consideration only of FM stations, whereas three AM stations cover, and thus wholly eliminate, the entirety of Sanpete's purported white and gray areas.

In view of the foregoing, Micro respectfully submits that the points raised in Sanpete's Opposition fail to rebut the grounds upon which it has sought reconsideration of the *Report and Order* and that Micro's captioned rulemaking should be reinstated.

Respectfully submitted,

MICRO COMMUNICATIONS, INC.

By: _____



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Its Attorney

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August 21, 2006

**ENGINEERING STATEMENT CONCERNING
OPPOSITION TO PETITION FOR RECONSIDERATION
FILED BY 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**

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AUGUST 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 response to Opposition To Petition For Reconsideration in MB Docket No. 04-258 filed by Sanpete County Broadcasting Co. ("**Sanpete**")¹ in the above captioned proceeding on August 7, 2006. Sanpete's Opposition states that **Micro's** proposed modification to the Table of Allotments would create unpopulated white and gray areas.

The affiant has reviewed Sanpete's Opposition, including the accompanying engineering statement of Kevin Terry. The purpose of this statement is to demonstrate that Sanpete's characterization of the loss area associated with **Micro's** proposed deletion of Channel 244C at Levan, Utah is in error and cannot be relied upon.

Figure 1 attached depicts the KQMB Channel 244C allotment in blue and the proposed Channel 229C allotment in red. Figure 2 depicts AM 0.5 mV/m primary contours in relation to the KQMB allotments. Figure 3 depicts other FM services in relation to the KQMB allotments.

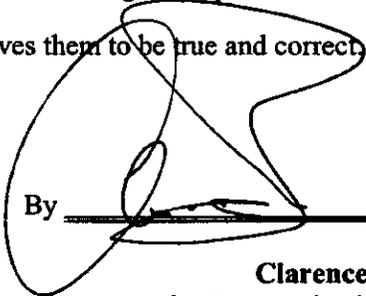
By reference to Figure 3 it is true that, based on FM stations only, some white and gray area exist southeast of Huntington. However, when AM stations are considered² there are a minimum of three aural services to all loss area.

¹Sanpete is the successor to Mid-Utah Radio, Inc.

²The Mid-Utah statement references only AM station KSL despite acknowledging additional AM services in its September 13, 2004 Comments and Counter Proposal.

To conclude, Sanpete's statement that Micro's proposal creates a substantial amount of unpopulated white and gray area is not true. When AM stations are included, as depicted on Figure 2 herein, it is seen that there are a minimum of three aural services to all areas within the loss area associated with the Micro Petition of Rulemaking.

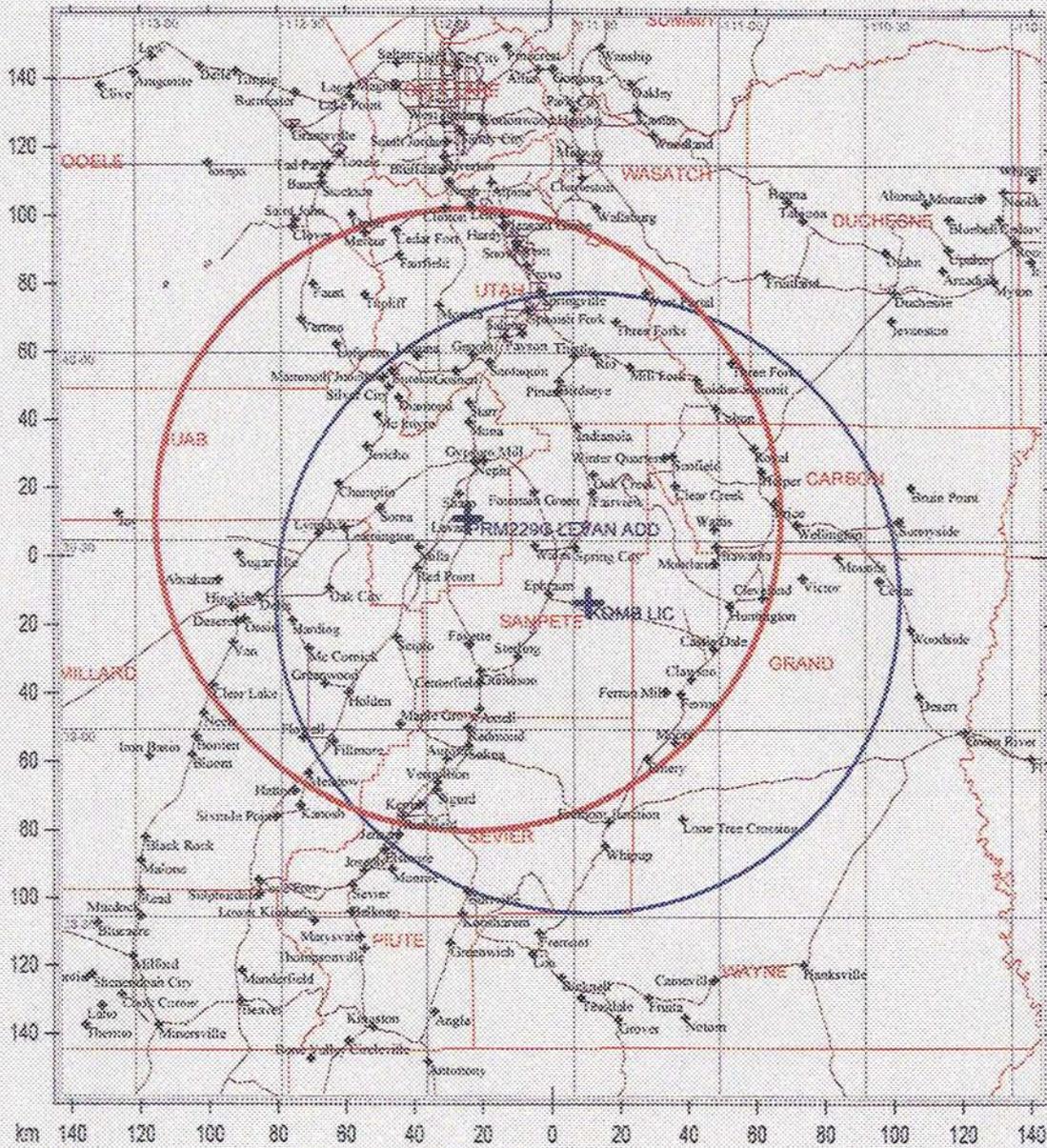
The foregoing was prepared on behalf of **Micro Communications, Inc.** by Clarence M. Beverage of *Communications Technologies, Inc.*, Marlton, New Jersey, whose qualifications are a matter of record with the Federal Communications Commission. The undersigned certifies, under penalty of perjury, that 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

August 18, 2006

CH 244C @ KOMB SITE = BLUE CH 229C @ LEVAN = RED



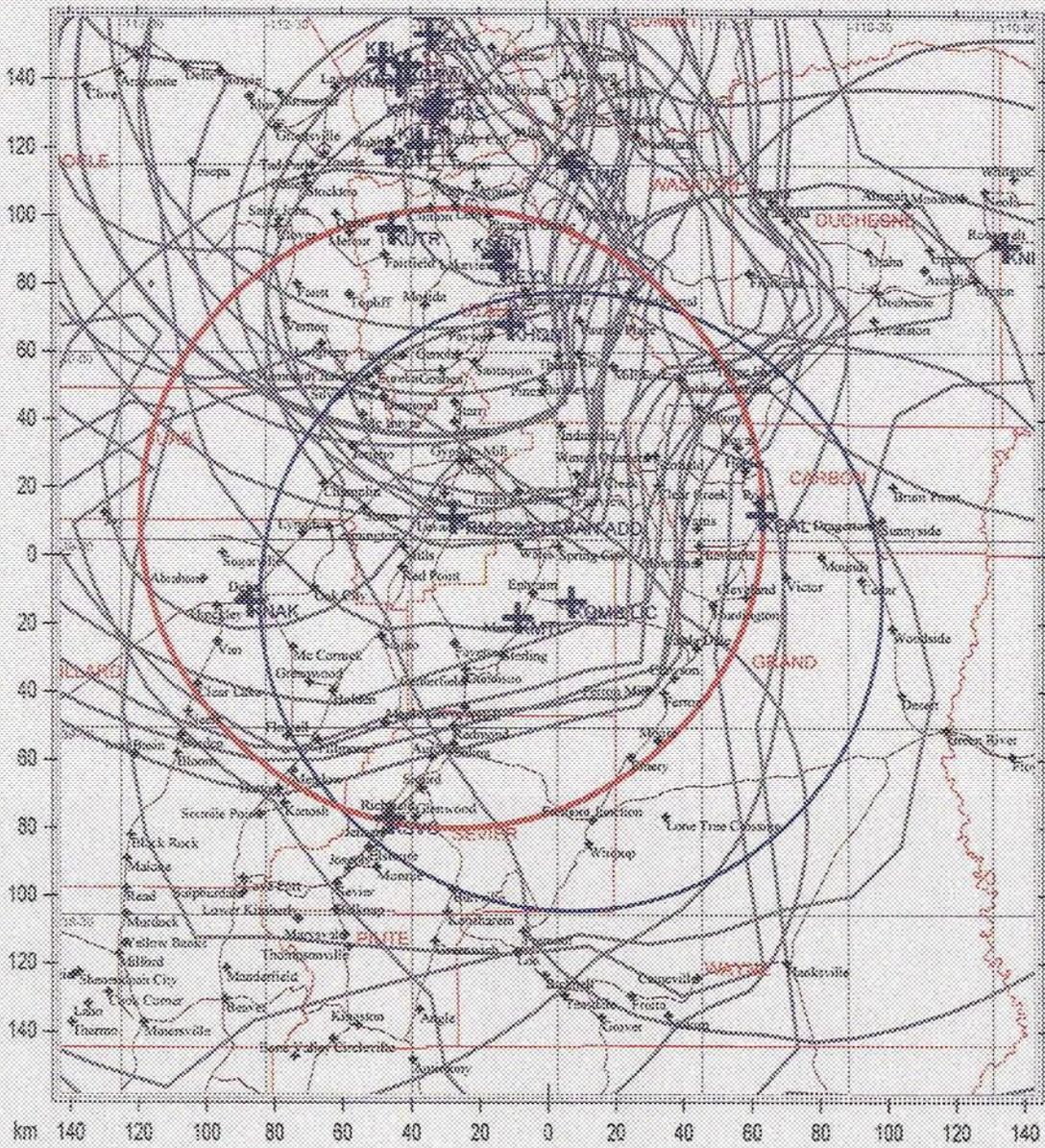
Communications Technologies, Inc. Marlton, New Jersey 08053

National Borders County Borders City Borders Highways Lat/Lon Grid

Map Scale: 1:20000000 1 cm = 20.00 km V/H Size: 316.37 x 285.81 km

FIGURE 1

CH 244C @ KQMB SITE = BLUE CH 229C @ LEVAN = RED



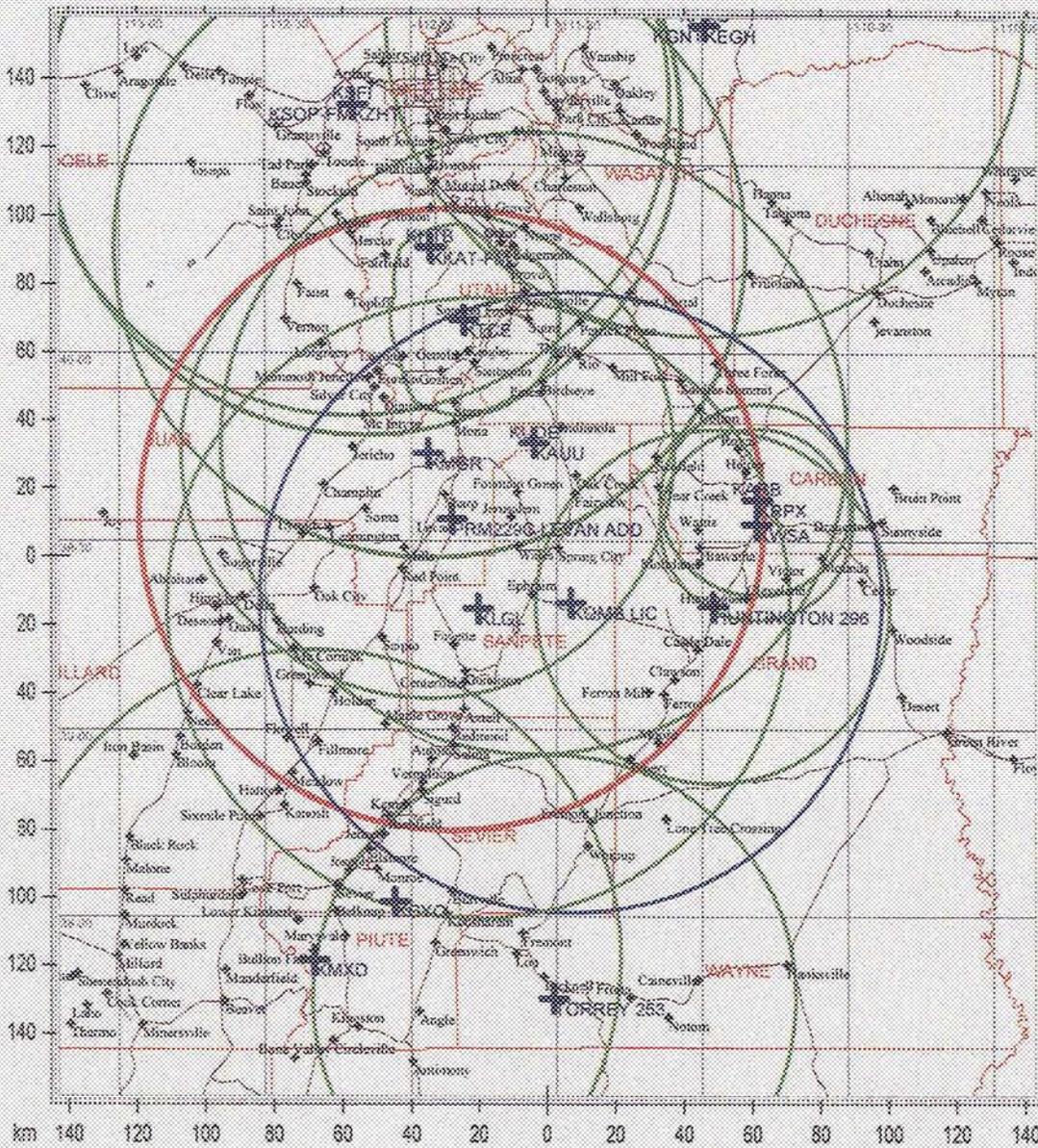
Communications Technologies, Inc. Marlton, New Jersey 08053

National Borders County Borders City Borders Highways Lat/Lon Grid

Map Scale: 1:2000000 1 cm = 20.00 km VJH Size: 316.37 x 285.81 km

FIGURE 2

CH 244C @ KQMB SITE = BLUE CH 229C @ LEVAN = RED



Communications Technologies, Inc. Marlton, New Jersey 08053

National Borders
 County Borders
 City Borders
 Highways
 Lat/Lon Grid

Map Scale: 1:2000000 1 cm = 20.00 km V/H Size: 316.37 x 285.81 km

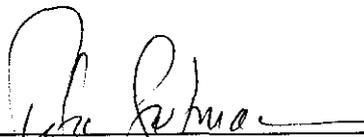
FIGURE 3

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 21st day of August, 2006, caused copies of the foregoing Reply to Opposition to Petition for Reconsideration to be mailed to the following by first-class United States mail, postage prepaid:

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Peter Gutmann