

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 08-242
Table of Allotments,) RM-11506
FM Broadcast Stations.)
(Ten Sleep, Wyoming))

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

FILED/ACCEPTED

MAR 24 2009

Federal Communications Commission
Office of the Secretary

REPLY COMMENTS

Legend Communications of Wyoming, LLC ("Legend") hereby submits its Reply Comments in the above captioned proceeding. *See Notice of Proposed Rule Making (NPRM)*, DA 09-42, released January 16, 2009. The purpose of these Reply Comments is to respond to a Counterproposal filed by White Park Broadcasting, Inc. ("White Park") on March 9, 2009. White Park's Counterproposal is defective because it fails to (i) include any technical information necessary to evaluate the proposal, and (ii) provide coverage to 100 percent of the proposed community of license, Lucerne, Wyoming. Thus, the Commission must dismiss White Park's Counterproposal because it was not "technically correct and substantially complete at the time it was filed." Nevertheless, even if the Commission considers White Park's Counterproposal, it can grant both Legend's proposal to allot Channel 267A at Ten Sleep, Wyoming, and White Park's counterproposal to allot a channel to Lucerne, Wyoming, because an alternate channel (Channel 283C2) is available at Lucerne. In support hereof, Legend states as follows:

1. In response to a Petition for Rule Making filed by Legend, the *NPRM* proposed to allot Channel 267A at Ten Sleep, Wyoming in order to maintain that community's first local

service.¹ Legend filed comments on March 9, 2009, reaffirming its interest in maintaining a first local service at Ten Sleep, Wyoming. Also on March 9, 2009, White Park filed a Counterproposal which proposes to allot Channel 265C2 to Lucerne, Wyoming as that community's first local service. However, White Park's Counterproposal is technically defective for two reasons. First, White Park does not provide any of the technical information in its Counterproposal necessary to evaluate the proposal. Most importantly, White Park does not provide the geographic coordinates, a channel study, or any engineering exhibit demonstrating that its Counterproposal is in compliance with the Commission's rules.² For this reason, the Commission must dismiss White Park's Counterproposal because it was not "technically correct and substantially complete at the time it was filed." See *Sierra Vista and Corona de Tucson, Arizona*, 19 FCC Rcd 10997 (2004) (dismissed a counterproposal because it failed to include coordinates and did not contain an engineering statement); *Liberty, New York*, 8 FCC Rcd 4085 (1993) (dismissed counterproposal for lack of engineering study); *Big Springs, Sterling City and Coahoma, Texas*, 7 FCC Rcd 4834, note 9 (1992) ("we expect petitioners to submit, at a minimum, an engineering statement designating exact site coordinates and demonstrating compliance with all relevant domestic and international minimum spacing requirements"); *Springdale, Arkansas, et al.*, 4 FCC Rcd 674 (1989) (dismissed counterproposal for failure to include channel study).

¹ Pursuant to *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212 (2006) (the "FM Allotment Order"), Legend contemporaneously filed a Form 301 application for this proposal. See BNP-20080916ADK. Legend filed the Petition in order to ensure that Ten Sleep retains local service. Legend, the permittee of Station KYTS(FM) at Ten Sleep, filed an application to move Station KYTS to Manderson, Wyoming as that community's first local service. See BMPH-20080916ABE.

² Pursuant to the *FM Allotment Order*, White Park contemporaneously filed a Form 301 application for its proposal for Channel 265C2 at Lucerne, Wyoming. See BNP-20090309AAN. This application appears to contain a channel study and engineering exhibits for White Park's proposal. However, this does not relieve White Park of its obligation to submit this information in its Counterproposal.

2. The White Park Counterproposal is also defective because it does not provide coverage to 100 percent of Lucerne from the proposed allotment site. In its application filed concurrently with its Counterproposal, White Park includes an exhibit (Exhibit 24) which purports to demonstrate that the proposal provides a 70 dBu contour to 100 percent of Lucerne. It appears that White Park uses actual terrain to determine coverage. The Commission, however, consistently uses uniform terrain to demonstrate community coverage. *See, e.g., Huntsville, Missouri*, 21 FCC Rcd 8750, note 11 (2006); *Caldwell, College Station and Gause, Texas*, 13 FCC Rcd 13772, ¶11 (1998); *Stuart and Boone, Iowa*, 6 FCC Rcd 6036, note 3 (1991) (“in predicting city grade coverage at the allotment stage, we generally assume uniform, as opposed to actual, terrain”). As demonstrated in the attached Technical Statement, prepared by Graham Brock, Inc., using uniform terrain at the allotment coordinates in the Lucerne application (43-38-08 N, 107-49-28 W), White Park’s proposal only provides a 70 dBu contour to 84.9 percent of Lucerne. Thus, the Commission must dismiss White Park’s Counterproposal for this independent reason.

3. White Park’s Counterproposal must be dismissed because was not technically correct and substantially complete at the time it was filed. Nevertheless, even if the Commission accepts and considers White Park’s Counterproposal, it can grant both Legend’s proposal to allot Channel 267A at Ten Sleep, Wyoming, and a channel at Lucerne, Wyoming (Channel 283C2) in response to the interest expressed by White Park at the coordinates specified in its application. This will permit the Commission to provide a first local service to two communities (Manderson and Lucerne, Wyoming) and maintain local service at Ten Sleep, Wyoming. The Commission routinely allots alternate channels in order to eliminate a conflict between two proposals. *See Meeteetse, Wyoming*, 23 FCC Rcd 447 (2008); *Prineville, Oregon*, 22 FCC Rcd 17625 (2007);

Oak Harbor and Sedro-Woolley, Washington, 21 FCC Rcd 10029 (2006); *Coupeville and Sequim, Washington*, 21 FCC Rcd 1551 (2006).

4. As demonstrated in the attached Technical Statement (Exhibits 1 and 5), White Park's transmitter site can be accommodated on Channel 283C2 with 70 dBu coverage exceeding 80 percent. Exhibits 2 and 3 demonstrate that fully spaced allotment reference coordinates exist for Channel 283C2 which provide 100 percent coverage of Lucerne.³ Thus, Channel 283C2 must be preferred over Channel 265C2, as proposed by White Park.⁴

For the foregoing reasons, Legend respectfully requests that the Commission (i) dismiss White Park's Counterproposal without the issuance of a Public Notice soliciting Reply Comments, (ii) grant Legend's proposal to allot Channel 267A at Ten Sleep, Wyoming and, (iii) separately grant Legend's related application to move Station KYTS(FM) to Manderson, Wyoming as that community's first local service. Should the Commission decide to accept White Park's Counterproposal, it should allot Channel 283C2 at Lucerne in lieu of Channel 265C2 so that both proposals can be granted.

³ Channel 283C2 can also be allotted at the reference coordinates specified in White Park's application. *See* Technical Statement (Exhibit 5).

⁴ It is disingenuous of White Park to propose a channel that does not comply with the Commission's technical rules, when there is an alternate channel available that will provide service to Lucerne and that complies with the Commission's technical rules. By choosing a conflicting channel and submitting a defective proposal, White Park will delay action on Legend's proposal for Ten Sleep.

Respectfully submitted,

LEGEND COMMUNICATIONS OF
WYOMING, LLC

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Its Attorneys

March 24, 2009

REPLY COMMENTS
LEGEND COMMUNICATIONS OF WYOMING, LLC
MB DOCKET #08-242
ALLOT CHANNEL 267A
TEN SLEEP, WYOMING
March 2009

TECHNICAL STATEMENT

1. This technical statement and attached exhibits were prepared on behalf of Legend Communications of Wyoming, LLC (“Legend”), petitioner in MB Docket #08-242, which seeks the allotment of Channel 267A at Ten Sleep, Wyoming. The proposed allotment would provide a potential replacement channel in light of Legend’s request to re-allot Channel 271C2 from Ten Sleep to Channel 271C3 at Manderson, Wyoming.¹ During the comment period in MB Docket #08-242, a counterproposal was submitted by White Park Broadcasting, Inc. (“White Park”), seeking the allotment of Channel 265C2 to Lucerne, Wyoming.

2. Based on the site specified in the White Park application (BNPH-20090309AAN) for Channel 265C2, the request fails to meet §73.207 requirements to the allocation site (and pending application site) for Legend’s proposed Channel 267A at Ten Sleep. Thus, based on the data as submitted in its application, the White Park request is mutually exclusive. However, as will be shown below, the requested use of Channel 265C2, based on the proposed allocation site, also fails to provide the requisite 70 dBu contour over 100% of the proposed community of license of Lucerne.² Further, in its counterproposal, White Park provides no geographic

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- 1) The proposed change in community for KYTS, which is presently authorized, but unbuilt at Ten Sleep, Wyoming to Channel 271C3 at Manderson, Wyoming was proposed in BMPH-20070306AAX.
- 2) The proposed implementation site for Lucerne is the same as the allocation site.

coordinates for its requested allocation site and no spacing study to demonstrate compliance with §73.207 of the Commission's rules. Additionally, White Park has made no showing in its counterproposal that the site is suitable for tower construction. Therefore, the counterproposal is not technically compliant and should be dismissed.

DISCUSSION

3. In its counterproposal for Channel 265C2 at Lucerne, Wyoming, White Park provides no geographic coordinates for its reference allocation site at Lucerne; no demonstration that the proposed facility will provide a 70 dBu contour (without terrain considerations) to all of Lucerne, Wyoming; and provides no study to show the proposed allocation site meets the Commission's minimum distance separation requirements to other FCC authorized, applied for or proposed facilities. The engineering accompanying the counterproposal compares the 60 dBu contours of the proposed Lucerne, Wyoming proposal to Legend's request for Channel 267A at Ten Sleep, Wyoming.³

4. As shown on the attached Exhibit #1, a reference 70 dBu contour from the proposed allocation site, based on the coordinates contained in BNPB-20090309AAN of North Latitude 43° 38' 08" and West Longitude 107° 49' 28", fails to encompass 100% of Lucerne, Wyoming.⁴ Only 84.9% of the boundary of Lucerne is within the 70 dBu contour. In its application, White Parks claims that the proposed facility complies with §73.315 of the rules, but the basis for this

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- 3) The showing depicts the 60 dBu contours of both the proposed Lucerne, Wyoming facility and the proposed Ten Sleep, Wyoming Class A considering actual terrain conditions, rather than using uniform terrain. Therefore, any population comparisons on that basis are irrelevant.
- 4) A maximum Class C2 facility would provide a 70 dBu contour extending 32.6 kilometers.

seems to rely on the predicted 70 dBu contour of the applied for facility. As White Park may not be the actual winner for Channel 265C2 at a future auction, it cannot rely on this depiction to eliminate the failure to provide the needed coverage from the allocation site. Further, while Channel 265C2 from the allocation reference coordinates meets the minimum distance separation requirements to all facilities, with the exception of the proposed use of Channel 267A at Ten Sleep, Wyoming, White Park has made no showing that the proposed allocation site is suitable for tower construction. As the proposed allocation site fails to provide the required 100% coverage to Lucerne and has not been shown to be suitable for tower construction, the counter-proposal should be dismissed without further consideration.

5. Should the Commission find that Lucerne, Wyoming is a viable community for the allotment of an FM channel, Legend suggests that Channel 283C2 be allotted to Lucerne, Wyoming in lieu of Channel 265C2. Unlike Channel 265C2, Channel 283C2 can be allotted within the boundary of Lucerne, without the imposition of a site restriction. As noted on Exhibit #2, Channel 283C2 meets the Commission's minimum distance separation requirements to all facilities. Further, from the potential allocation reference site, a 70 dBu contour is provided to 100% of Lucerne, as shown on Exhibit #3. Finally, the proposed allocation reference site is not located off-shore, on airport property nor in any state or national protected areas and is, therefore, suitable for tower construction (see Exhibit #4). It is also noted, as indicated on Exhibit #5, that Channel 283C2 can also be used at the site specified by White Park in BNPH-20090309AAN.

Therefore, Channel 283C2 can be considered as an alternate channel at Lucerne, Wyoming, eliminating any conflict with Legend's proposed use of Channel 267A at Ten Sleep, Wyoming.

6. The foregoing was prepared on behalf of Legend Communications of Wyoming, LLC, by Graham Brock, Inc., its Technical Consultants. All information contained herein is true and accurate to the best of our belief and knowledge. All data relating to FM facilities was extracted from the Commissions CDBS database. We assume no liability for errors or omissions in that database which may be adverse to the request contained herein.

Graham Brock, Inc. - Broadcast Technical Consultants

Reference
Latitude: 43-38-08 N
Longitude: 107-49-28 W
ERP: 50.00 kW
Channel: 265C2
Frequency: 100.9 MHz
AMSL Height: 1751.0 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: None

Washakie

70 dBu (radius)

Area beyond contour

43-45-00 N

Hot Springs

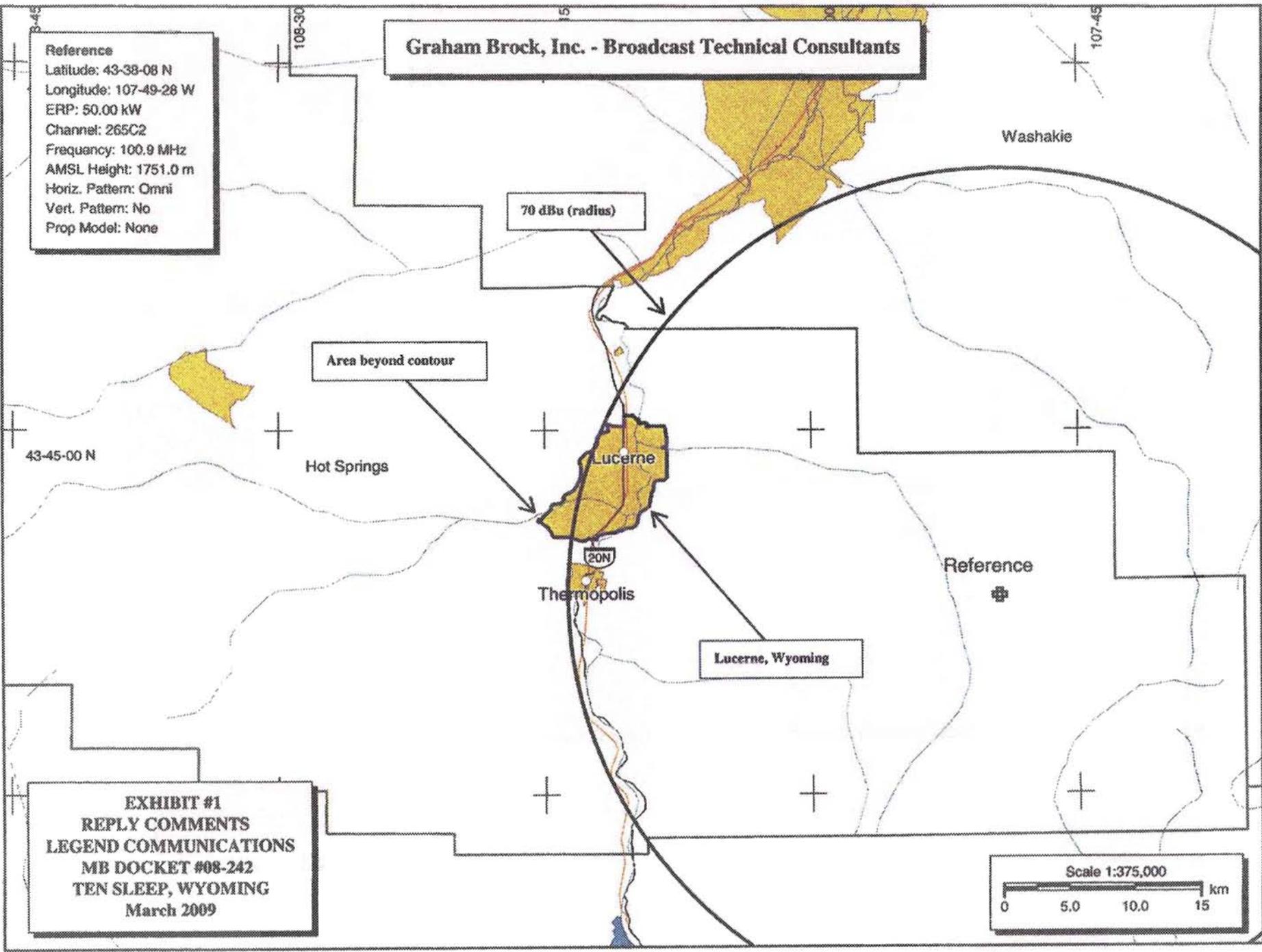
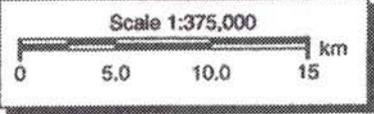
Lucerne

Thermopolis

Reference

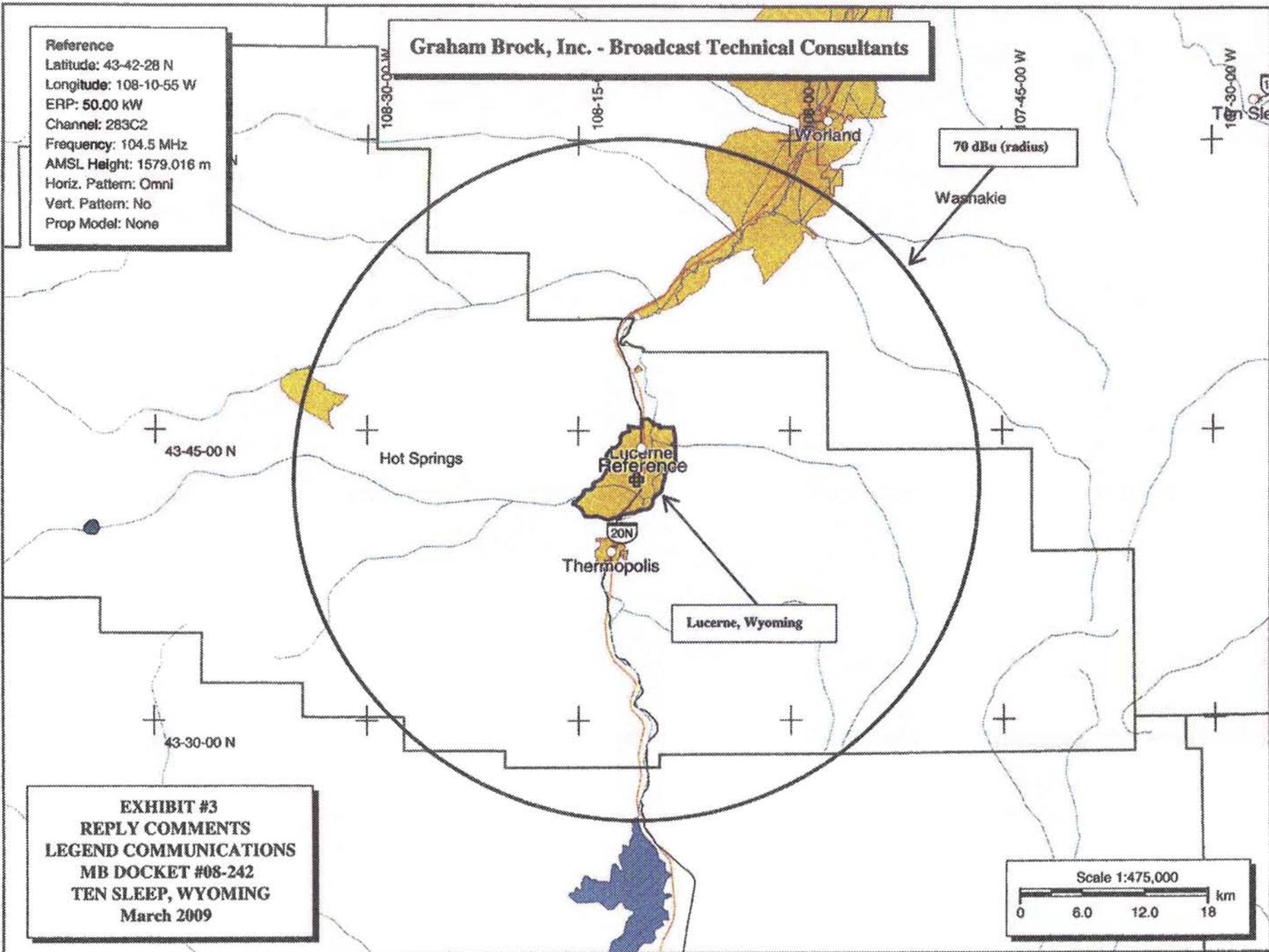
Lucerne, Wyoming

**EXHIBIT #1
REPLY COMMENTS
LEGEND COMMUNICATIONS
MB DOCKET #08-242
TEN SLEEP, WYOMING
March 2009**



Reference
Latitude: 43-42-28 N
Longitude: 108-10-55 W
ERP: 50.00 kW
Channel: 283C2
Frequency: 104.5 MHz
AMSL Height: 1579.016 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: None

Graham Brock, Inc. - Broadcast Technical Consultants

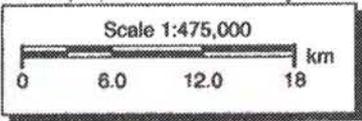


70 dBu (radius)

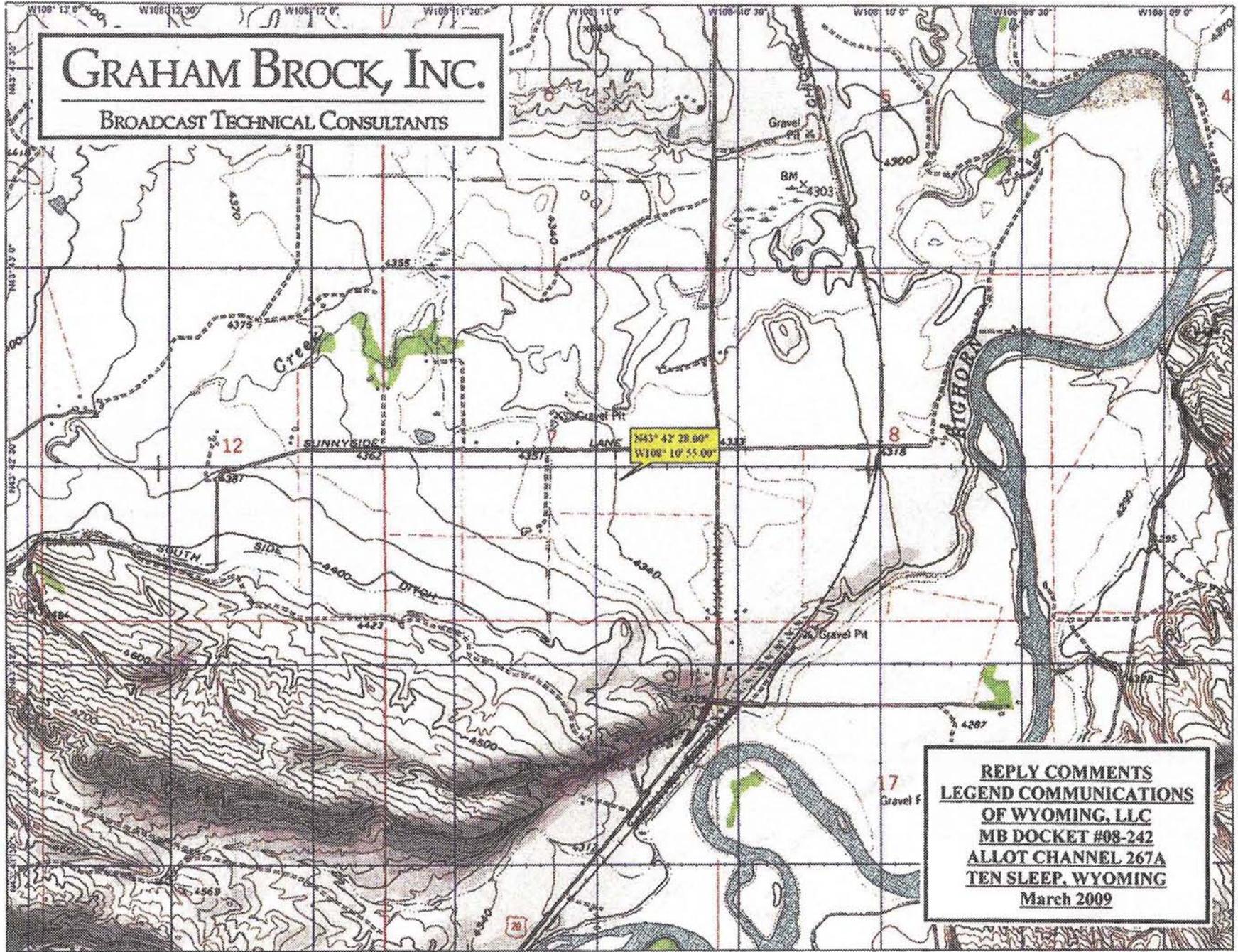
Washakie

Lucerne, Wyoming

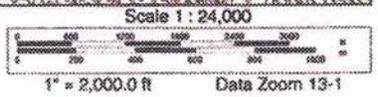
**EXHIBIT #3
REPLY COMMENTS
LEGEND COMMUNICATIONS
MB DOCKET #08-242
TEN SLEEP, WYOMING
March 2009**



GRAHAM BROCK, INC.
BROADCAST TECHNICAL CONSULTANTS



**REPLY COMMENTS
LEGEND COMMUNICATIONS
OF WYOMING, LLC
MB DOCKET #08-242
ALLOT CHANNEL 267A
TEN SLEEP, WYOMING
March 2009**



AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

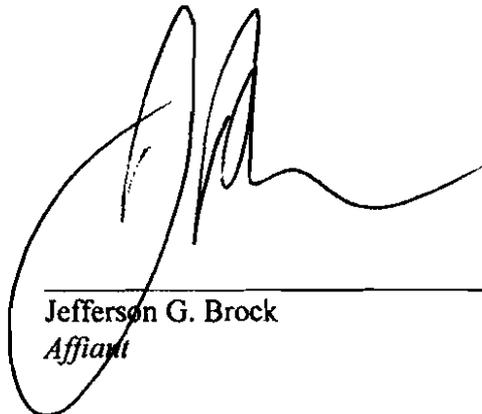
State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Legend Communications of Wyoming, L.L.C, to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

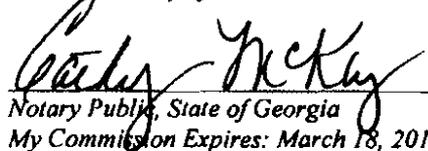
The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 20th day of March 2009.



Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 20th day of March 2009*



Notary Public, State of Georgia
My Commission Expires: March 18, 2011

CERTIFICATE OF SERVICE

I, Randy Pannell, in the law firm of Wiley Rein LLP, hereby certify that I have on this 24th day of March, 2009, caused to be hand-delivered, a copy of the foregoing “**Reply Comments**” to the following:

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Federal Communications Commission
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Washington, DC 20554

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Randy Pannell