

Section 307(b) Showing

ADD: 269C3 Vaughn, MT

DELETE: 280C3 Vaughn, MT

and

ADD: 270A Helena Valley Northeast, MT

DELETE: 269C1 Highwood, MT

and

ADD: 291C1 Highwood, MT

DELETE: 291C1 Great Falls, MT

The instant application is being contemporaneously and contingently filed with 301 Applications submitted by the following parties:

- The Montana Radio Company, LLC (“TMRC”), licensee of KUUS(FM) Vaughn, MT and KZUS(FM) Highwood, MT
- Fisher Radio Regional Group, Inc. (“Fisher”), licensee of KQDI-FM Great Falls, MT

TMRC and Fisher contingently and contemporaneously propose the following: (a) TMRC proposes to substitute KUUS(FM)’s channel of 280C3 with 269C3 at its current site; (b) in order for the KUUS(FM) channel substitution to comply with Section 73.207 channel spacings requirements, TMRC contingently proposes that channel 269C1 at Highwood be deleted and mutually exclusive Channel 270A be added at Helena Valley Northeast, MT, for use by KZUS(FM) at a modified allotment reference site; and (c) in order to not deprive Highwood, MT, of its sole local transmission service, Fisher contingently proposes to delete Channel 291C1 at Great Falls, MT, and add mutually exclusive Channel 291C1 at Highwood, MT, for use by KQDI-FM at its current allotment reference site.

This exhibit, together with the Comprehensive Technical Exhibits to these Applications, demonstrates that the proposed community of license changes constitute a preferential arrangement of allotments or assignments under Section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. Section 307(b)). Furthermore, as set forth in the Comprehensive Technical Exhibit to each Application, the facilities specified are mutually exclusive, as defined in Section 73.207 of the Commission's Rules, with the current assignments. As confirmed in the Comprehensive Technical Exhibit to each application, there is an assignment or allotment site for all facilities at each proposed community of license that fully complies with Sections 73.207 and 73.315 of the Commission's Rules without resort to Sections 73.213 or 73.215. The applicants will comply with the local public notice provisions of Sections 73.3580(c)(3), 73.3580(d)(3), and 73.3580(f) of the Commission's Rules, and understand that the exception contained in Section 73.3580(e) of the Commission's Rules does not apply to an application proposing to change the community of license of an FM station. Consequently, the proposed community of license changes shall qualify for submission as minor modification applications pursuant to Section 73.3573(g) of the Commission's Rules.

In determining whether a proposed community of license change constitutes a preferential arrangement of allotments under Section 307(b) of the Act, the Commission considers whether the proposal would serve one or more of the Commission's four priorities.¹

¹ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) ("FM Assignment Policies"). The four priorities are: (i) first full-time aural reception service to a community; (ii) a second full-time aural reception service to a community; (iii) first local transmission service to a community; and (iv) other public interest factors. The second and third criteria have equal priority. *Id.* at 91. See also *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of*

Here, grant of the Application would satisfy the Priority 3 by authorizing first local aural transmission service at Helena Valley Northeast, MT. The Applications constitute a preferential arrangement of allotments under Section 307(b) as compared to the existing allotment/assignment.

Helena Valley Northeast, Montana, constitutes a community suitable for allotment purposes. Commission precedent holds that a community that is a Census Designated Place presumptively qualifies as a community for allotment purposes and thereby merits its own local transmission service.² Helena Valley Northeast meets this qualification: it is listed in the 2000 Census as a Census Designated Place with a population of 2,122 persons.

The Commission has previously determined that Highwood, Montana, is a community suitable for allotment purposes (see BMPH-20080225AHI). Highwood continues to be a community suitable for allotment purposes. Furthermore, a grant of the Applications would not result in a loss of sole local aural transmission service at Highwood since the applicants contingently propose to change the community of license of KQDI-FM from Great Falls, Montana, to Highwood, MT.

License in the Radio Broadcast Services, 21 FCC Rcd 14212, at ¶ 10 (2006) (Section 307(b) priorities and policies used by Commission since 1982 continue to apply under new application procedures).

² See e.g., *Cleveland and Ebenezer, Mississippi R&O*, 10 FCC Rcd 8807, 8808 [¶ 6] (Allocations Br. 1995) (“The Commission’s long standing policy is to allot channels to communities composed of geographically identifiable population groupings. This requirement is generally satisfied if the community is either incorporated or listed in the U.S. Census.”). See also *Reydon, Oklahoma R&O*, 18 FCC Rcd 3222, 3222 [¶ 2] (Ass’t Chief, Audio Div., released Mar. 4, 2003); *Randsburg, California*, 21 FCC Rcd 367 (Ass’t Chief, Audio Div. 2006).

Upon the deletion of Channel 291C1 from Great Falls when KQDI-FM changes community to Highwood, Great Falls will continue being well served by the thirteen (13) fulltime aural services of KAAK(FM), KAFH(FM), KFRW(FM), KGFA(FM), KGFC(FM), KGPR(FM), KLFM(FM), KSLK(FM), KMON-FM, KMON(AM), KEIN(AM), KQDI(AM), and KXGF(AM).

Since the KUUS(FM) equivalent class channel substitution is occurring at its currently licensed site, its channel substitution will not implicate Section 307(b) as no gain or loss area is created.

With regard to the KZUS(FM) community change, Exhibit 1, attached hereto, is a Gain/Loss study demonstrating that when Channel 269C1 is deleted from Highwood and mutually exclusive Channel 270A is added to Helena Valley Northeast for KZUS(FM)'s use, a net loss in population of 35,152 persons will result under Priority 4. Exhibit 2 is a Highwood, Montana, Remaining Services Study demonstrating that when KZUS 269C1 is deleted from Highwood no white or gray area will be created by the proposed community change. Exhibit 3 is an Existing Services Study showing the stations currently serving the KZUS(FM) gain area at Helena Valley Northeast. No white or gray area is eliminated by the KZUS(FM) relocation to Helena Valley Northeast.

Since the proposed reference site for the addition of Channel 291C1 at Highwood is co-located with the currently licensed KQDI-FM operations at Great Falls, no gain or loss area will

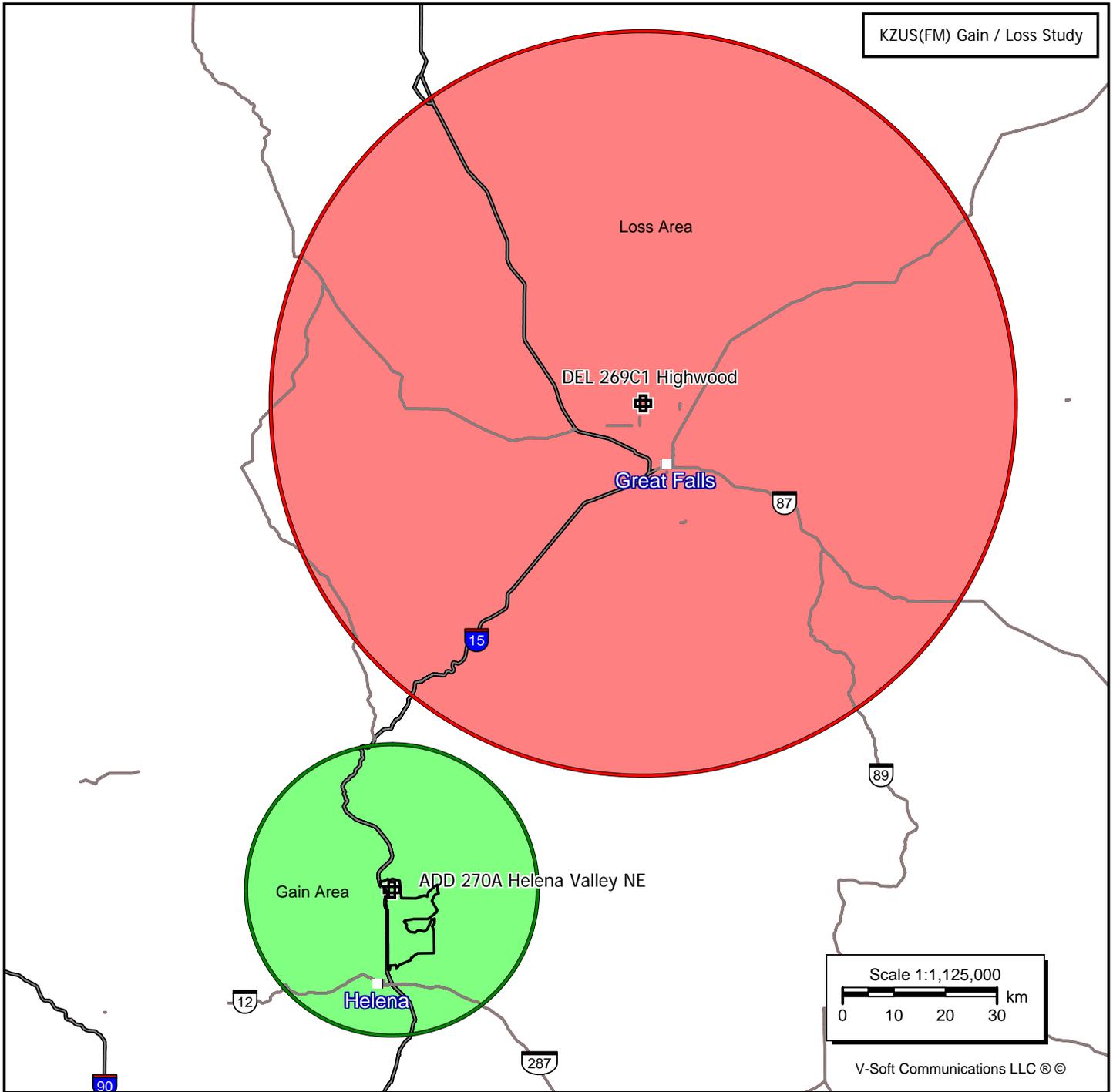
be created. As such, no gain or loss area study is being included herein for KQDI-FM's community change from Great Falls to Highwood.

The current KZUS(FM) 70 dBu contour at Highwood covers the Great Falls, MT, Urbanized Area. However, the proposed KZUS(FM) 70 dBu contour at Helena Valley Northeast will not encompass any portion of an Urbanized Area. As such, the instant proposal is not subject to a *Tuck* analysis of Helena Valley Northeast, MT, and, in fact, the KZUS(FM) proposal represents a migration of service from an urban area *to* a rural area. The current and proposed KQDI-FM 70 dBu contours both cover 100% of the Great Falls, MT, Urbanized Area. As such, the KQDI-FM change does not represent a migration of service from an urban to rural area either. As such, the entire proposal is not subject to *Tuck*.

Since the proposal favorably triggers Priority Three and provides first local transmission service to the 2,122 residents of Helena Valley Northeast, MT, the negative aspect of removing an aural service from a net 35,152 residents in the heavily served Great Falls Urbanized Area under Priority 4 is overcome and, as such, the contingent proposals clearly further the Commission's Allotment Priorities.

Exhibit 1

KZUS(FM) Gain/Loss Study



ADD 270A Helena Valley NE

Channel: 270A
 Frequency: 101.9 MHz
 Latitude: 46-45-22.70 N
 Longitude: 112-00-01.62 W
 COR AGL Height: 106.74 m
 COR AMSL Height: 1405.57 m
 Base Elevation: 1298.83 m
 COR HAAT: 100.0 m
 ERP: 6.00 kW
 Horiz. Pattern: Omni
 Vert. Pattern: No
 Prop Model: None

DEL 269C1 Highwood
 BMLH20090730AAS

Channel: 269C1
 Frequency: 101.7 MHz
 Latitude: 47-36-24 N
 Longitude: 111-21-31 W
 COR AGL Height: 223.43 m
 COR AMSL Height: 1387.43 m
 Base Elevation: 1164.0 m
 COR HAAT: 299.0 m
 ERP: 100.00 kW
 Horiz. Pattern: Omni
 Vert. Pattern: No
 Prop Model: None

Gain / Loss Population Report:

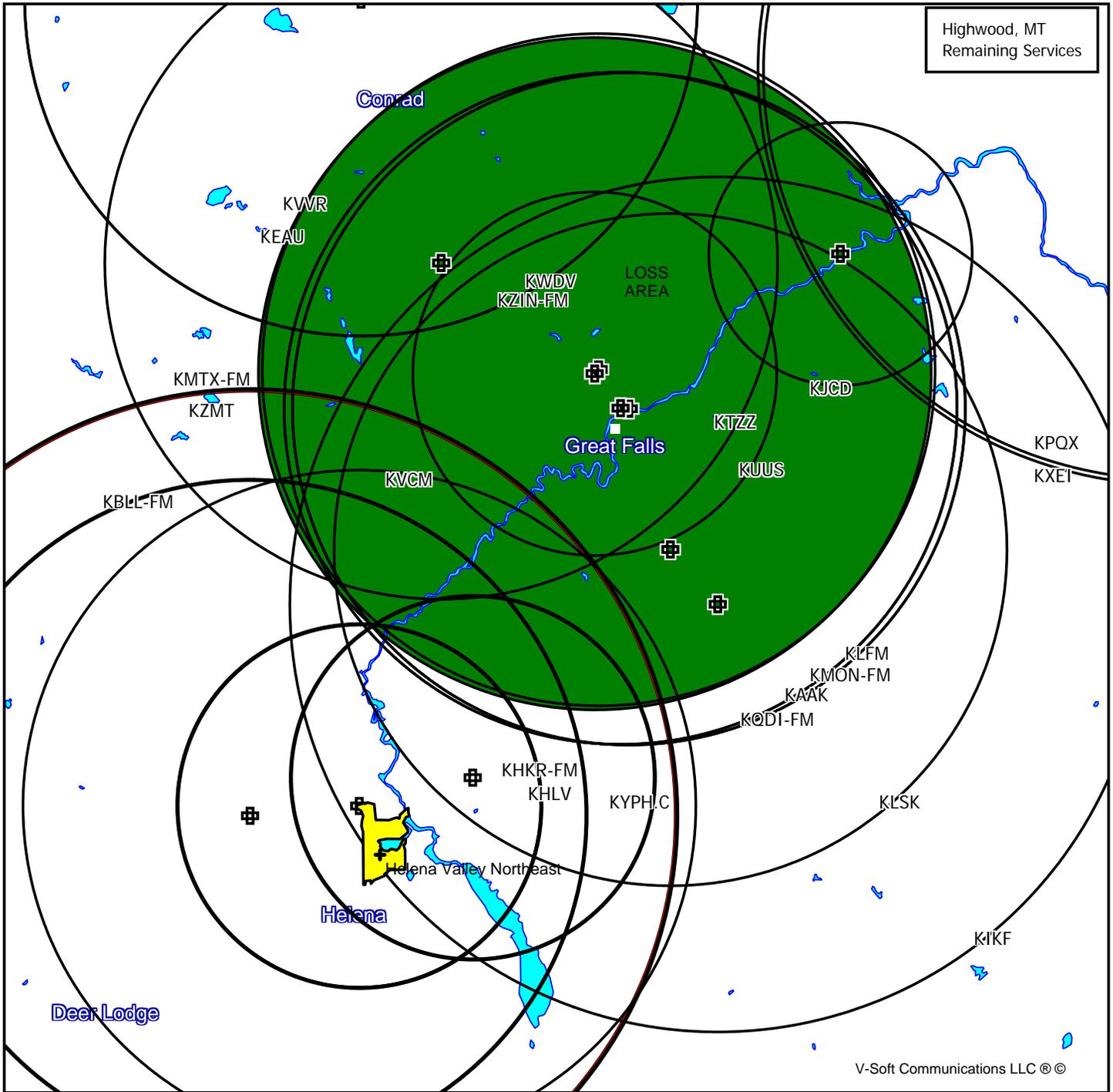
Population in Gain Area: 54,790 Persons
 Geographical size of Gain Area: 2,516 sq. km

Population in Loss Area: 89,942 Persons
 Geographical size of Loss Area: 16,422 sq. km

Net Loss of Population: 35,152 Persons
 Net Loss of Geography: 13,906 sq. km

Exhibit 2

Highwood, MT, Remaining Services Study



Highwood, MT
Remaining Services

DEL 269C1 Highwood, MT

Channel: 269C1
 Frequency: 101.7 MHz
 Latitude: 47-36-24 N
 Longitude: 111-21-31 W
 COR HAAT: 273.0 m
 ERP: 100.00 kW
 Horiz. Pattern: Omni
 Vert. Pattern: No
 Prop Model: None



Exhibit 3

Helena Valley Northeast, MT, Existing Services Study

Helena Valley Northeast
Existing Services

