

Section 307(b) Showing
ADD: 283C2 Ucon, ID
DELETE: 283A Ashton, ID
and
ADD: 217A Ashton, ID
DELETE: 217C1 Gardiner, MT

The following parties contemporaneously and contingently file minor modification applications implement two community changes:

- Ted W. Austin, Jr. (“Austin”), Licensee of KRID(FM) Ashton, ID¹
- Western Family Television, Inc, (“Austin”) Permittee of New FM CP Gardiner, MT, FCC Facility #177234 (“New CP”)

In its application, Austin proposes to change KRID(FM)’s community of license from Ashton, ID, to Ucon, ID, as that community’s first local transmission service, modify the allotment reference site coordinates of KRID(FM), and upgrade from Channel 283A to mutually exclusive Channel 283C2.² In order to accommodate the KRID(FM) modification, Western contingently proposes in its application to change NEW CP’s community of license from Gardiner, MT, to Ashton, ID, at a new antenna site in order to provide replacement of Ashton’s sole local transmission service prior to KRID(FM) relocating to Ucon.

² Although KRID(FM) currently holds a license to operate on Channel 243A at Ashton (see BLH-20080317ABC), in MB Docket 05-243, Channel 283A was substituted for Channel 283A at Ashton at a modified allotment site for KRID(FM)’s use.

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 herein are mutually exclusive with the current assignments. As confirmed in the Comprehensive Technical Exhibit to each application, there is an assignment or allotment site for both facilities at each proposed community of license that fully complies with Sections 73.207, 73.315, and 73.509, as appropriate, of the Commission's Rules without resort to Sections 73.213 or 73.215. It should also be noted that although Section 73.515 requires that NCE FM stations need only maintain a minimum field strength of 1 mV/m (60 dBu) over at least 50 percent of its community of license, since an NCE FM will be replacing service currently offered by a Commercial FM at Ashton, ID, the Applicants have opted to have NEW CP comply with the more restrictive provisions of Section 73.315 by providing a 3.16 mV/m (70 dBu) contour over 100% of the community of license.

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.³ Here, grant of the Application would satisfy the third and fourth priorities by authorizing first local aural transmission service at Ucon, ID, and adding an additional aural service to 90,522 persons.

The Applications constitute a preferential arrangement of allotments under Section 307(b) as compared to the existing allotment/assignment. Furthermore, a grant of the Applications would not result in a loss of sole local aural transmission service at Ashton since the applicants contingently propose to change the community of license of NEW CP from Gardiner, MT, to Ashton, ID. NEW CP has not been constructed and has never been operated at Gardiner. As such, the community has never become reliant on NEW CP's service and should not be considered as implicating the Commission's pre-disposition against the removal of sole local service. Instead, the Commission should review this proposal as the equivalent of two competing first local service requests. Under this analysis, the Commission compares the populations of the two communities and selects the proposal that serves the largest community. In this case, Ucon had a population, according to the 2000 Census, of 943 persons. However, since the 2000 Census was taken, Ucon has enjoyed a 13% growth rate and was estimated to have a population in 2007 of 1,070 persons. In contrast, the 2007 Census Estimate for Gardiner

³ 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 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).

was 871 people, a negligible increase of only 20 people over its 2000 census population of 851 people. See <http://www.city-data.com/city/Gardiner-Montana.html>. Thus, using both the 2000 Census and the 2007 estimates, the population of Ucon exceeded and exceeds the population of Gardiner. Ucon is therefore to be preferred.

As can be seen in Exhibit 1, attached hereto, is a Gain/Loss study demonstrating that when Channel 283A (appropriately using the allotment reference coordinates authorized in MB Docket 05-243) is deleted from Ashton and mutually exclusive Channel 283C2 is added to Ucon for KRID(FM)'s use, a net gain in population of 105,724 persons will result under Priority 4. In fact, it is worth noting that the small Loss Area created when Channel 283A is deleted from Ashton, ID, contains no population.

Exhibit 2 is a Gain/Loss study demonstrating that when Channel 217C1 is deleted from Gardiner, Montana, and mutually exclusive Channel 217A is added to Ashton, Idaho, a small net "loss" in population of 15,202 persons will result under Priority 4. Nevertheless, such loss is only hypothetical, as the Gardiner station has never been built. Moreover, in light of circumstances that have changed since the CP was issued (and specifically the nationwide economic downturn), Western finds that it can no longer justify the significant expenditures required to construct this high-powered FM facility with an expensive directional antenna. As a result, any "loss," either in terms of reception service or transmission service, stemming from the move of the Western CP to Ashton is purely imaginary. The only difference is that the removal of the local service that Western might have provided at Gardiner will be accomplished more

quickly and more assuredly through the reassignment to Ashton than by waiting for the Gardiner permit to expire.

Even assuming that the Gardiner station were constructed and operating, when the gain and loss areas are summed, the net, net gain achieved when adding service at Ucon exceeds the net loss of removing potential service at Gardiner by 90,522 persons. This change clearly satisfies the objectives of Priority 4.

Exhibit 3 is an Ashton, ID, Remaining Services Study demonstrating that when Channel 283A is deleted from Ashton and NEW CP 217A is added at Ashton as its replacement transmission service, no white or gray area will be created. Therefore, Priorities 1 and 2 are not impacted negatively. As was stated before, there is no population in the Loss Area. Nonetheless, even this small, unpopulated area will be relegated to no fewer than 4 aural reception services. Therefore, Priority 4 is not offended.

Exhibit 4 is an Existing Services Study at Ucon, ID, showing the stations currently serving the gain area. As can be seen, although two, three, or four aural services only currently serve some portions of the gain area, these portions of the gain area are unpopulated.

Since Western has neither constructed facilities nor operated at Gardiner, remaining services in the hypothetical Loss Area will simply consist of a continuation of existing services. Therefore, Western's CP only currently represents a "potential" service that will not be constructed in the foreseeable future at Gardiner, and not service that would actually be lost as

the result of modifying the city of license as requested in the Western Application. Exhibit 5 is a Remaining “Potential” Services Study that includes all other “Potential” Services currently authorized to serve the hypothetical Loss Area. Exhibit 5 demonstrates that when Channel 217C1 is deleted from Gardiner, no white area will be created. A small amount of “potential” gray area will be created, but its population is only 65 persons. When compared to the total number of persons receiving a new aural reception service (90,522 persons), and especially in light of the fact that the Gardiner facility will most likely not ever be constructed, the number of persons inside this potential gray area would be considered *de minimis*. Therefore, Priorities 1 and 2 are not compromised by the proposed change.

The Remaining “Potential” Services Study does show that some underserved areas would continue to receive fewer than five aural reception services. However, this is not significant since Western’s CP has not commenced operations. In such instances, the loss of a potential service does not raise the same level of concern as loss of an existing service. *See, e.g., Linden, Texas*, 16 FCC Rcd 10853 ¶ 3 (2001) (“We do not believe that the removal of an unbuilt station . . . presents the parallel concerns with loss of service represented by the removal of an operational station since it does not represent a service that the public has become reliant upon”). Similarly, in *Chatom and Grove Hill, Alabama*, 12 FCC Rcd 7664 (Alloc. Br. 1997), the Branch noted that the reallocation of station WFOV, Chatom, to Grove Hill, Alabama would not injure residents of its initially-authorized service area:

[A]s Station WFOV(FM) is an unbuilt facility, the residents of that community will experience no loss of existing service if its proposal is adopted....

...Station WFOV(FM) is not constructed. Therefore, we do not consider its removal from Chatom to present the parallel concerns with loss of service

represented by the removal of an **operating** station, as it does not constitute a service that the public has become reliant on. (Citations omitted; emphasis added.) Moreover, the reallocation will not result in the relocation of Station WFOV(FM) from a rural to an urban area.

Chatom at paragraphs 3-4.⁴

Ucon, ID, is not located inside a U.S. Census designated Urbanized Area. Also, neither the theoretical Class C2 70 dBu circle contour from the Channel 283C2 Allotment Site nor the proposed KRID(FM) F(50,50) 70 dBu contour will encompass any portion of an Urbanized Area. As such, the instant proposal is not subject to a *Tuck* analysis since the move does not represent a migration of service from a rural area to an urban area. Similarly, since NEW CP does not place a 70 dBu contour over an Urbanized Area and Ashton is not located in an Urbanized Area, the replacement of existing service at Ashton with NEW CP is also not subject to a *Tuck* analysis.

As evidenced by the attached information and photos included in Exhibit 6, Ucon, ID, qualifies as a community for allotment purposes under Section 307(b). Ucon is an incorporated city established in 1911 in Bonneville County, Idaho. As such, it is presumed to be a community for allotment purposes.⁵ Ucon has its own ZIP Code of 83454 and its own US Post Office located at 10990 N Yellowstone Highway within the city limits of Ucon. The City of Ucon has a city office building at 3787 112th N. The city owns and operates its own volunteer fire department and also provides water and sewage services to its residents. Ucon Elementary School is located at 10841 N 41st E. Church Services are offered predominantly through the

⁴ See also *Old Forge and Black River, New York*, 21 FCC Rcd 2470 (MB 2006), *Pelham and Meigs, Georgia*, 18 FCC Rcd 12187 (MB 2003).

⁵ See *Stock Island, Florida*, 8 FCC Rcd 343 (M.M. Bur. 1993); *East Hemet, California, et al.*, 4 FCC Rcd 7895 (M.M. Bur. 1989); and *Hannahs Mill and Milledgeville, Georgia*, 7 FCC Rcd 3944 (M.M. Bur. 1992).

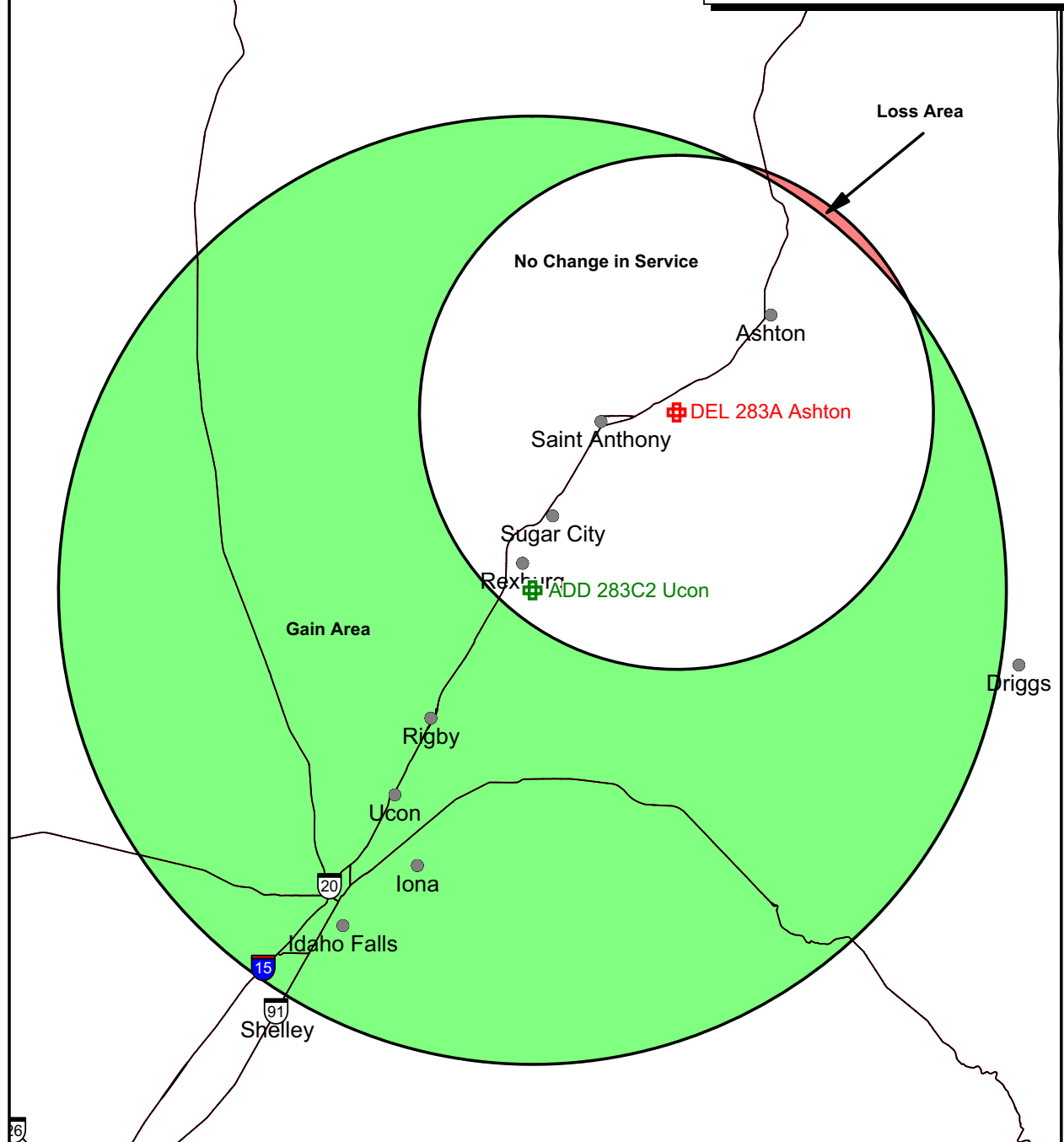
Church of Jesus Christ of Latter Day Saints with three churches located within the city limits. Residents of the community often gather in Simmons Park to celebrate local festivities. Ucon is also served by several businesses providing a wide range of services to the community. Ucon is also taking active steps to facilitate continued economic growth through an economic development infrastructure project funded by the State of Idaho, Department of Commerce, and Rural Idaho Initiative. A monument commemorating the history of Ucon was erected in 1954 in the community by the Daughters of Utah Pioneers and notes: "In 1883-84 a group of Mormons from Utah settled in this area. They cleared sage brush from arid land, dug canals and built humble homes. They erected a log room which was used for church, school and recreation. Mattie Smith was the first school teacher. A [Church of Jesus Christ of Latter Day Saints] Ward was organized August 11, 1888 with Alphonzo B Simmons Bishop. They named the town Willow Creek for the stream that flowed thru the land, but in 1911 the name was changed to Ucon."

The proposal positively triggers Priority 3 by providing a first local transmission service to Ucon, ID (2007 population of 1,070), and Priority 4 by providing a new aural reception service to a net 90,522 persons. Accordingly, the package represented by the Ucon and Ashton Applications clearly offers a preferential arrangement of FM channel assignments as compared with the present situation. These Applications should be granted.

Exhibit 1

KRID(FM) Gain/Loss Study

KRID(FM) Gain/Loss Study



Gain/Loss Results:

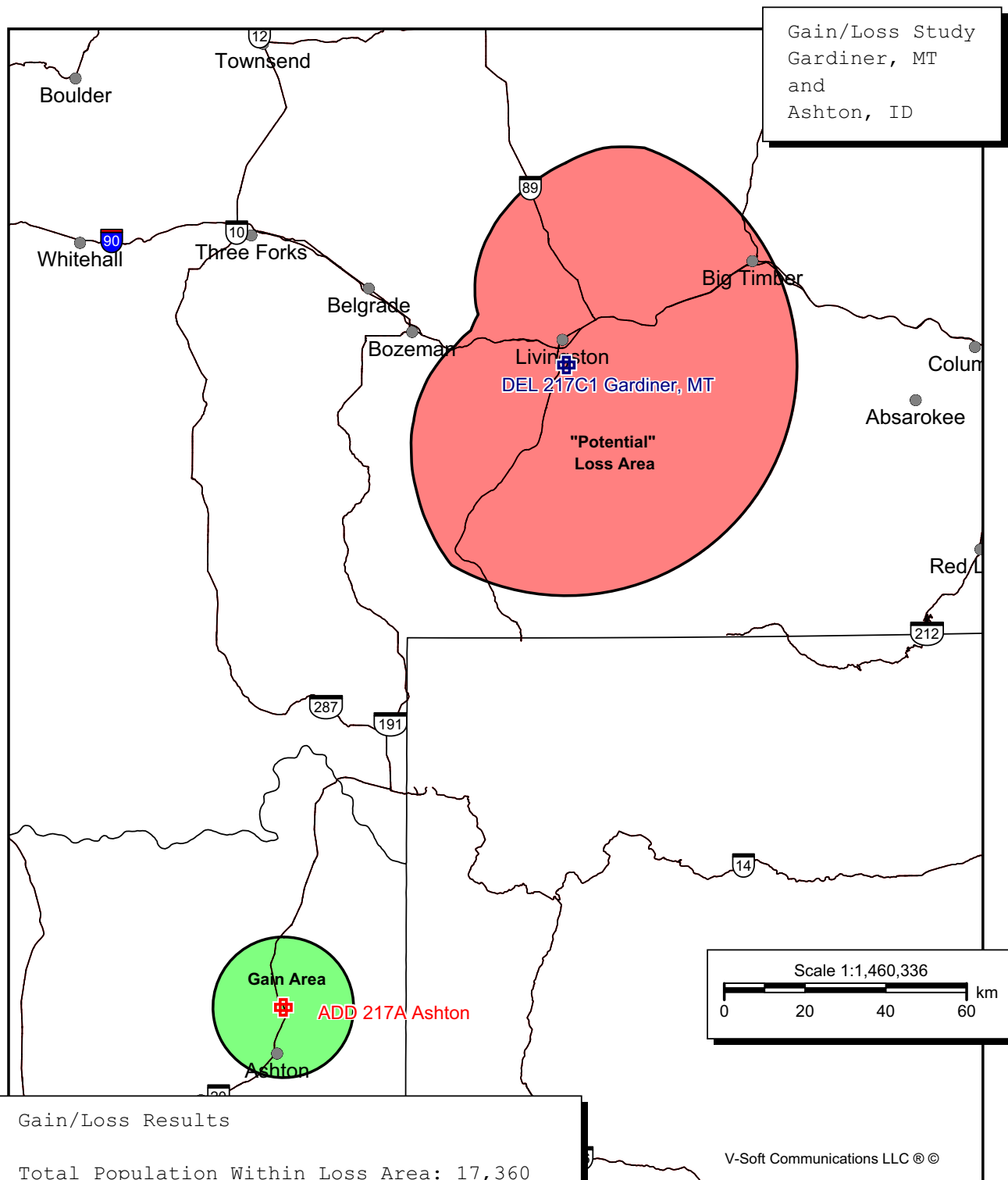
Population in Gain Area: 105,724 Persons
Land in Gain Area: 6070 sq. km

Population in Loss Area: 0 Persons
Land in Loss Area: 26 sq. km

Net Gain in Persons Served: 105,724 Persons
Net Gain in Land Served: 6044 sq. km

Exhibit 2

NEW FM Gain/Loss Study



Gain/Loss Results

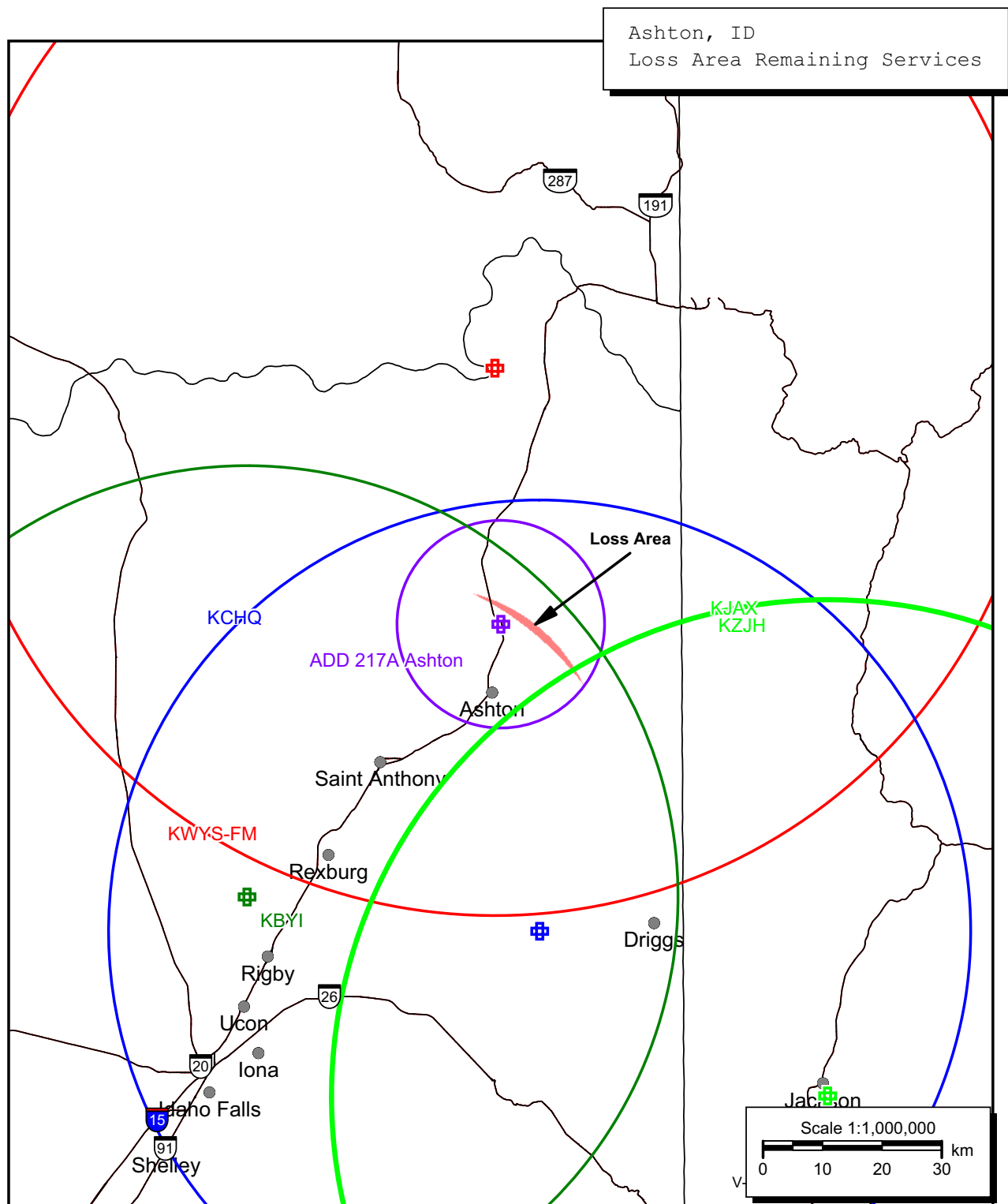
Total Population Within Loss Area: 17,360
Total Area Within Loss Area: 7941.31 sq. km

Total Population Within Gain Area: 2,158
Total Area Within Gain Area: 950.70 sq. km

Net Loss in Population Served: 15,202
Net Loss in Area Served: 6990.61 sq. km

Exhibit 3

Ashton, ID, Remaining Services Study



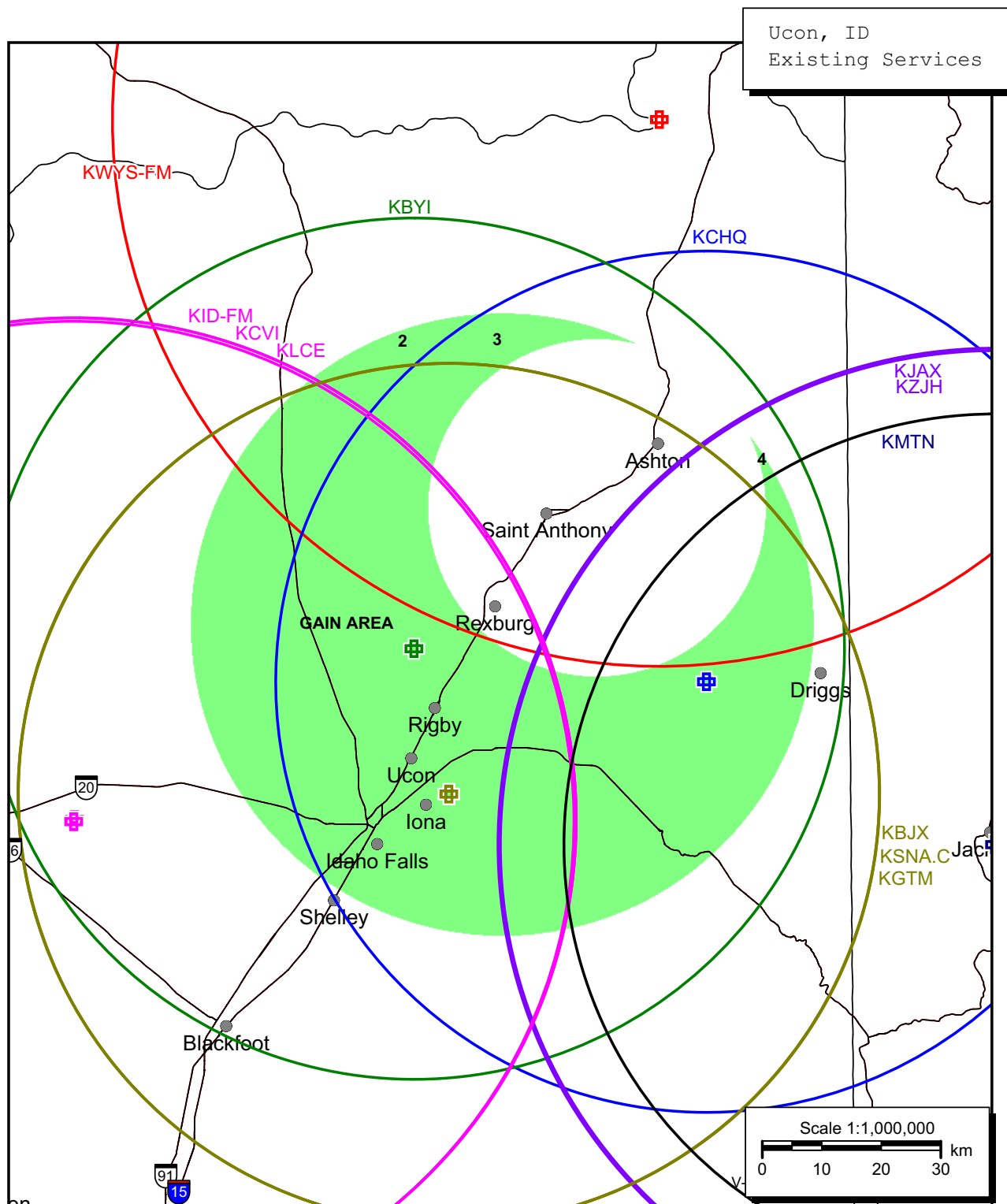
Remaining Services Study Results:

All of loss area retains at least four aural reception services:

- KWYS (FM)
- KBYI (FM)
- KCHQ (FM)
- New CP 217A Ashton (Contingently Proposed)

Exhibit 4

Ucon, ID, Existing Services Study



Existing Services Study Results:

With the exception of three unpopulated regions noted in the northern portions of the Gain Area, all of gain area is served by at least five aural reception services.

Exhibit 5

Gardiner, MT, Remaining “Potential” Services Study

Exhibit 6

Ucon, ID, Indicia Information

















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UCON, ID

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U.S. Census Bureau

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POPULATION FINDER

United States | Idaho | Ucon city

Ucon city, Idaho

Note: Information about challenges to population estimates data can be found on the Population Estimates Challenges page.

The 2007 population estimate for Ucon city, Idaho is 1,070.

city/ town, county, or zip

state

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	2007	2000	1990
Population	1,070	943	895

Source: U.S. Census Bureau, 2007 Population Estimates, Census 2000, 1990 Census

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Population for all cities and towns in Idaho, 2000:

[alphabetic](#) | [ranked](#)

Map of Persons per Square Mile, City/Town by Census Tract:

[2000](#) | [1990](#)

See more data for Ucon city, Idaho on the Fact Sheet.

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