

SCIARRINO & SHUBERT, PLLC  
BROADCAST & MEDIA LEGAL SERVICES

Dawn M. Sciarrino‡  
dawn@sciarrinolaw.com  
(202) 256-9551

Lee W. Shubert \*†°  
lee@sciarrinolaw.com  
(410) 935-1440

Christine McLaughlin\*†  
christine@sciarrinolaw.com  
(202) 375-9166

Katherine Tranchemontagne\*†  
ksuh@sciarrinolaw.com  
(202) 905-8291

December 13, 2016

***Via Hand Delivery***

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Washington, DC 20554

Attn: Mr. Robert Gates, Audio Division, Media Bureau

*Re: Citicasters Licenses, Inc.,  
FM Translator K256AE, Provo, UT  
Facility ID Number 6544  
Request to Cease Operations*

Dear Ms. Dortch:

SLC Divestiture Trust I (“SLC”), by its attorneys and pursuant to Section 74.1232(h) of the Commission’s Rules, 47 CFR § 74.1232(h), hereby requests that the Commission order the above-captioned FM translator station cease operations, due to harmful interference to SLC’s co-channel full power FM station KUDE(FM), Nephi, UT (Facility ID Number 72769). In the alternative, SLC requests that this Complaint be treated as an informal request for Commission action pursuant to Section 1.41 of the Commission’s Rules, 47 CFR § 1.41.

The current license for KUDE(FM) was issued as part of a complex, multiparty proceeding pursuant to which multiple licensees in Utah were required to undertake channel changes and other modification. *See Report and Order* in MB Docket 02-290, DA 04-1650, 19 FCC Rcd. 10327 (2004) (the “2004 Order”). Under the 2004 Order, Station KUDE was required to change its operating frequency from channel 280 to 256. After years of attempting to implement the required modifications to KUDE, the current licensee, SLC, filed a further modification application in June of 2016 to downgrade from channel 256C to 256A and to relocate to a new antenna site. *See* File No. BMPH-20160614AAJ; *see also*, Declaration of Kevin Terry, attached hereto as Attachment One. That application was granted on July 15, 2016,

4601 N. FAIRFAX DR. SUITE 1200 ARLINGTON, VA 22203  
703.991.7120 (FAX)

‡ Admitted in the District of Columbia, New York and Virginia \* Of Counsel † Admitted in District of Columbia ° Retired

and SLC acted promptly to construct the facilities authorized by the new construction permit, filing its application for license on or about August 31, 2016. See File No. BLH-20160831AAJ.

As detailed in Mr. Terry's attached Declaration, immediately upon commencing services, SLC noticed that KUDE was receiving significant harmful interference. See Attachment One. SLC took KUDE off the air in order to investigate the interference, and determined that it was being caused by translator K256AE, which is licensed to Citicasters Licenses, Inc. ("Citicasters"). *Id.* Mr. Terry's Declaration explains the level and cause of the interference to KUDE in detail.<sup>1</sup> Mr. Terry contacted Citicasters, but his conversations indicate that Citicasters will do nothing to prevent its translator from interfering with a full power station unless the Commission orders it to do so. *Id.* SLC therefore respectfully requests that the Commission order Citicasters to cease operations on K256AE unless and until the interference to SLC's full power broadcast station can be cured.

It is axiomatic that translators are secondary services, and any interference caused to a full power station is prohibited. See, e.g., *The Association for Community Education, Inc.*, 19 FCC Rcd 12682, ¶ 15(2004). As the Commission there stated, "[t]he FM translator rules strictly prohibit interference by these secondary service stations." *Id.* Attachment One amply demonstrates that K256AE is causing extreme interference to an authorized, full power broadcast station. For that reason alone, the Commission should order K256AE to cease operations unless it can resolve the interference.

Moreover, given the level of contour overlap between KUDE and K256AE, as shown in Attachment One, K256AE could not have been authorized had KUDE been licensed under its current parameters at the time. See 47 CFR § 74.1204(a). The Commission has inherent authority to cancel or modify any facility if its authorization could not or should not have been issued under current circumstances. *Cf.*, 47 USC § 308(b) ("...The Commission, at any time ... during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked..."); 47 USC § 312(a)(2); 47 CFR 74.1232(h) (certain translators may be ordered to cease operations due to changed circumstances). KUDE is no less a primary, full power broadcast station, and no less entitled to the protections of that status as against a secondary service, because of the date on which its current authorization was issued. To hold otherwise would confer *de facto* primary status on this interfering translator.

In light of the extensive interference that K256AE is causing to authorized full power station KUDE, the Commission should use its authority to protect the facilities of KUDE from this secondary station, and order K256AE to cease operations unless and until Citicasters can implement technical modifications that provide KUDE with the protection required by the Commission's Rules. Commission action is especially appropriate here, where the translator

---

<sup>1</sup> Because KUDE has been silent during extensive modifications, and during its recent investigation of the interference to its modified facilities, it has few if any current regular listeners. SLC will supplement this complaint to the extent that listeners to its newly-restored services complain of interference to their reception.

licensee admits that it will continue to cause interference to a primary service absent a Commission order. See Attachment One at 4.

Finally, upon investigating the interference to KUDE, Mr. Terry determined that K256AE is not operating from its licensed antenna site. See Attachment One at 3-4. A review of CDDBS does not indicate that Citicasters has sought, let alone obtained, Commission authorization to operate at any site other than that specified on its license. Therefore, at a minimum, Citicasters should be ordered to cease unauthorized operations that violate not only the Commission's Rules, but also its license.

For all the foregoing reasons, SLC respectfully submits that translator K256AE should be ordered to cease operations, unless and until it can demonstrate that it will operate in accordance with the terms of its license and in accordance with the Commission's rules prohibiting interference by translators to full power stations.

Thank you for your attention to this matter. If you have any questions or require additional information, kindly contact the undersigned.

Respectfully submitted,



Dawn M. Sciarrino  
Christine McLaughlin

Counsel to SLC Divestiture Trust I

cc (via email): James Bradshaw, Deputy Division Chief  
Marissa Repp, Esq., counsel to Citicasters Licenses, Inc.

**ATTACHMENT ONE**

## DECLARATION OF KEVIN TERRY

My name is Kevin Terry. I serve as Technical Consultant to SLC Divestiture Trust I (W. Lawrence Patrick, Trustee) (“SLC DT”), licensee of KUDE(FM) Nephi, UT (FCC ID# 72769). SLC DT has retained my services to identify and mitigate interference to KUDE’s new facilities recently licensed in BLH-20160831AAJ.

### BACKGROUND:

On June 8, 2004, the Commission issued a Report and Order to MB Docket No. 02-290 (the “R&O”) in which, among other changes, channel 256C was substituted for Channel 280C at Nephi, UT, to be used by KUDE. On June 23, 2004, KUDE former licensee Millcreek Broadcasting, LLC (“Millcreek”), submitted construction permit application BPH-20040623ABX (“CP #1”), as ordered in the R&O, to implement the channel change. The Commission issued a Construction Permit to the application on April 28, 2005, that included a condition that KUDE not commence operations on Channel 256C until, first, KNYN(FM) Fort Bridger, WY, commenced operations on Channel 280C1 which was also ordered in the R&O.

KUDE was unable to implement the channel change over the next several years and requested that its permit be tolled until the condition precedent of KNYN(FM) changing channels was met. After waiting 11 years, on June 14, 2016, SLC DT modified its tolled construction permit and downgraded KUDE from Channel 256C to Channel 256A at a new antenna site so that it could implement its channel change to Channel 256 and be fully spaced under Section 73.207 to KNYN(FM). The Commission issued a modification for KUDE to operate on Channel 256A on July 15, 2016 (the “CP #2 Modification”). With the issuance of CP #2 Modification, KNYN’s condition precedent became moot and the tolling ended upon grant

leaving SLC DT, as noted in the Public Notice Comment to CP #2, only “1 month and 18 days” to implement the CP #2 Modification<sup>1</sup>. SLC DT completed construction of the CP #2 Modification in that short remaining window and timely filed Form 302 on August 31, 2016. The KUDE 256A License was granted on September 14, 2016.

Shortly after commencing operations, the Licensee observed significant incoming interference throughout KUDE’s Protected Contour and elected to take the station silent so that it could identify the source of the interference and work to remedy the issue before investing in the development of an audience for the station on the new channel. On September 27, 2016, KUDE filed for Special Temporary Authority to remain silent so that it could address the interference problem (see BLSTA-20160927ACQ).

#### INTERFERENCE IDENTIFICATION:

On September 27, 2016, I generated channel studies to identify the most likely sources of the incoming interference. The most likely source of the interference was that of translator station K256AE Provo, UT (FCC Facility ID# 6544). The licensee of K256AE is Citicasters Licenses, Inc. (“Citicasters”), a subsidiary of iHeartMedia. Exhibit A includes an updated channel study generated for this Declaration.

After generating contour overlap maps, Longley-Rice maps, and profile maps for K256AE, I was confident that the source of the interference was that of K256AE. Exhibit B includes a contour map depicting the F(50,50) 60 dBu Protected Contour of KUDE in relation to both the corresponding Protected Contour of K256AE as well as the translator’s F(50,10) 40 dBu Interfering Contour. As can be seen in the map included in Exhibit A, **all of KUDE’s Protected**

---

<sup>1</sup> Even though CDBS displays that the expiration of the CP #2 Modification would be 7/15/2019 on the Application Search Details page, the face of the construction permit, itself, states “This permit modifies permit no.: BPH-20101220ABB,” and “The authority granted herein has no effect on the expiration date of the underlying construction permit.”

**Contour is completely enveloped by K256AE co-channel Interfering Contour.** Census 2014 data reveals that all 24,718 persons residing within KUDE's Protected Contour receive interference from the secondary service of K256AE.

Exhibit C includes two Longley-Rice maps that depict coverage that more accurately reflects the coverage I have experienced while monitoring K256AE. Due to the drastic change in elevation between the K256AE transmitter site and areas within the KUDE Protected Contour, field strengths for K256AE are predicted to be far higher than the coverage contours generated using the FCC method. As can be seen in the Longley-Rice maps, the signal from K256AE penetrates the entire KUDE Protected Contour with signal levels within KUDE's own community of license from the translator in excess of 65 dBu. Other areas within the KUDE Protected Contour receive a signal from K256AE that is greater than 70 dBu. In several areas within KUDE's Protected Contour, the undesired signal level from K256AE not only interferes with the desired signal of KUDE, but completely overwhelms it. The profile map included in Exhibit D also confirms that K256AE has unobstructed line-of-sight into Nephi with a predicted signal greater than 65 dBu.

On September 28, 2016, I traveled to Nephi, UT, to observe the interference. I was able to confirm that the interfering signal was rebroadcasting Citicasters' KJMY HD2 Bountiful, UT (FCC ID #6543) – the station listed with the FCC as being rebroadcast on K256AE. Therefore, I drove to the coordinates of the licensed site for K256AE (see BLFT-19940808TB) to examine the translator's facilities hoping to identify any antenna changes that could be readily made so that interference could be mitigated towards KUDE. Upon visiting the tower site located at coordinates N40-16-19, W111-55-24 (NAD 27) (the "K256AE Licensed Site"), I was unable to identify any antenna resembling an FM transmit antenna for K256AE or any other FM facility.

After consulting with colleagues, I was reminded that K256AE housed its equipment in the same facility as that of 94.9 KENZ(FM) Provo, UT (FCC Facility ID 6545) (the “94.9 Tower Site”). Prior to 2004, Citicasters owned the 94.9 Tower Site. In 2004, Citicasters sold the 94.9 Tower Site and the FM Station, which is now KENZ, to a company I worked for at the time (see BALH-20031217ABD). Until I was reminded, I had forgotten that Citicasters continued to operate K256AE in that facility after it sold the 94.9 Tower Site. It seemed likely to me that, 12 years later, K256AE might still operate K256AE from the 94.9 Tower Site.

#### COMMUNICATIONS WITH THE LICENSEE OF K256AE

On November 16, 2016, I contacted Patrick Gleason, Chief Engineer of iHeartMedia in Salt Lake City, to inform him of the interference that K256AE was causing to KUDE and requested that K256AE cease operations or otherwise cure the interference that the secondary service posed to the full power FM. I requested that the interference be cured by November 30, 2016, as SLC DT was planning on resuming operations on KUDE on December 1, 2016. Mr. Gleason asked if he could follow up with his supervisors on the issue and offered to get back to me in the next day or so.

On November 18, 2016, Mr. Gleason let me know that he had spoken to iHeartMedia’s supervisory engineers in San Antonio, TX. He said that the engineers agreed that K256AE caused substantial interference towards KUDE. However, Mr. Gleason said that Jeff Littlejohn, Executive VP, Engineering and Systems Integration for iHeartMedia, informed him that company policy dictated that the company would continue operating K256AE until the FCC ordered it to cease operations. He apologized but said SLC DT would have to go through the FCC complaint process in order to get such an order issued.

During that November 18<sup>th</sup> call, I asked Mr. Gleason if K256AE continued to operate from the 94.9 Tower Site. Mr. Gleason confirmed that, indeed, K256AE was located at the 94.9 Tower Site. Exhibit E includes a Google Earth Map depicting the locations of the K256AE Licensed Site and the 94.9 Tower Site where K256AE apparently operates an unlicensed facility. This distance between the K256AE Licensed Site and the 94.9 Tower Site is approximately two kilometers.

### APPARENT RULE VIOLATIONS

Section 74.1203(a) states that “An authorized FM translator or booster station will not be permitted to continue to operate if it causes any actual interference to the transmission of any authorized broadcast station.” SLC DT has observed significant interference throughout the area where KUDE(FM) should be able to provide protected service – even within KUDE’s community of license. These observations are bolstered in Exhibits A and B herein, which depict K256AE causing significant interference throughout entire KUDE protected contour. As mentioned above, SLC DT complained to Citicasters about the interference problem and requested it either cease operations or eliminate the interference by the application of suitable techniques in accordance with Section 74.1203(b). Thus far, Citicasters has refused to do either.

Section 74.1232(h) states that the authorization for an FM translator may be “terminated at any time, upon not less than sixty (60) days written notice, where the circumstances in the community or area served are so altered as to have prohibited grant of the application had such circumstances existed at the time of its filing.” The underlying construction permit to K256AE’s present license was filed on February 7, 1994, in BPFT-19940207TB. At that time, KUDE operated on Channel 280 at Nephi, UT (see BLH-19940131KF). However, MB Docket 02-290 ordered KUDE(FM) to change its channel from 280 to 256 thereby significantly altering the

“circumstances in the community or area [K256AE] served.” If KUDE had operated under its present license (BLH-20160831AAJ) at the time when K256AE filed its permit application in 1994, it is my belief that the translator’s permit application would not have been granted as it would have violated Section 74.1204(a)(3) in that the translator’s proposed F(50,10) 40 dBu Interfering Contour would have not only overlapped, but completely encompassed KUDE(FM)’s protected 60 dBu contour.

Additionally, K256AE is operating from a location approximately 2 kilometers from its licensed location; however, I have found no indication that Citicasters has applied for or received Commission authorization to operate from an alternate location. Although the change between K256AE’s authorized and actual antenna sites would likely constitute a minor change under 47 C.F.R. § 74.1233(a), an application for such a change would nonetheless be required pursuant to 47 C.F.R. § 74.1233(d)(1).

## CONCLUSION

It is the undersigned’s observation that K256AE causes interference to KUDE(FM)’s newly licensed facilities in a manner so severe that it makes KUDE’s ability to provide interference free service to its listeners within its protected contour or community of license impossible. It is also the undersigned’s opinion that, despite Citicasters engineers’ acknowledgement that K256AE causes significant interference to KUDE, there is no path to resolution with Citicasters in curing the interference problem without immediate intervention from the FCC.

This declaration is submitted under the penalty of perjury.

By:  \_\_\_\_\_

Name: Kevin Terry  
Technical Consultant to SLC DT

Date: December 5, 2016

**EXHIBIT A**

**Contour Overlap Tabulations**

KUDE 256A Nephi, UT  
 Contour Overlap Tabulation Study

REFERENCE CH# 256A - 99.1 MHz, Pwr= 0.64 kW, HAAT= 308.0 M, COR= 2050 M DISPLAY DATES  
 39 43 58.0 N. DATA 11-04-16  
 111 56 35.0 W. Average Protected F(50-50)= 28.47 km SEARCH 11-19-16  
 Omni-directional

CH CITY	CALL	TYPE STATE	ANT	AZI <--	DIST FILE #	LAT LNG	PWR(kW) HAAT(M)	INT(km) COR(M)	PRO(km) LICENSEE	*IN* (Overlap in km)	*OUT*
256C Nephi	AL9950	RSV-A UT	---	84.3 264.5	31.50 RM10772	39 45 37.0 111 34 38.0	100.000 600	195.0 2728	90.1	202.5R	-171.0M
256A Nephi	KUDE	LIC_CX UT		0.0 0.0	0.00 BLH20160831AAJ	39 43 58.0 111 56 35.0	0.640 308	62.2 2050	20.1	-82.3*	-82.3* Slc Divestiture Trust I (w
256D Provo	<del>K256AE</del>	LIC_CN UT		1.6 181.6	59.88 BLFT19940808TB	40 16 19.0 111 55 24.0	0.250 814	97.3 2312	35.0	-58.5*<	-39.4*< Citicasters Licenses, Inc.
256C1 Fort Bridger	KNYN<	LIC_C_ WY		25.6 206.3	200.15 BMLH20030213AAB	41 21 10.0 110 54 26.0	27.500 489	168.8 2662	77.4	199.5R	0.7M M. Kent Frandsen
258C Bountiful	KJMY<	LIC_CY UT		349.4 169.2	98.91 BLH19880311KC	40 36 29.0 112 09 33.0	40.000 900	9.9 2611	81.0	94.5R	4.4M Citicasters Licenses, Inc.
254C Salt Lake City	KBEE<	LIC_C_ UT		349.4 169.2	98.95 BMLH20100723AVI	40 36 30.0 112 09 34.0	40.000 894	9.8 2603	80.6	94.5R	4.5M Radio License Holding Cbc,
254D Gunnison	<del>K254CT</del>	CP_DC_ UT		161.9 342.1	48.04 BMPFT20160926ACT	39 19 17.0 111 46 11.0	0.250	0.7 2598	19.2	13.7	27.2 Sanpete County Broadcastin
202D Provo	<del>K202CG</del>	LIC_DV_ UT		14.6 194.7	41.06 BLFT20130910ABX	40 05 26.0 111 49 17.0	0.080 661	4.7 2090	1.6	9.5R	31.6M Calvary Chapel Of Twin Fal

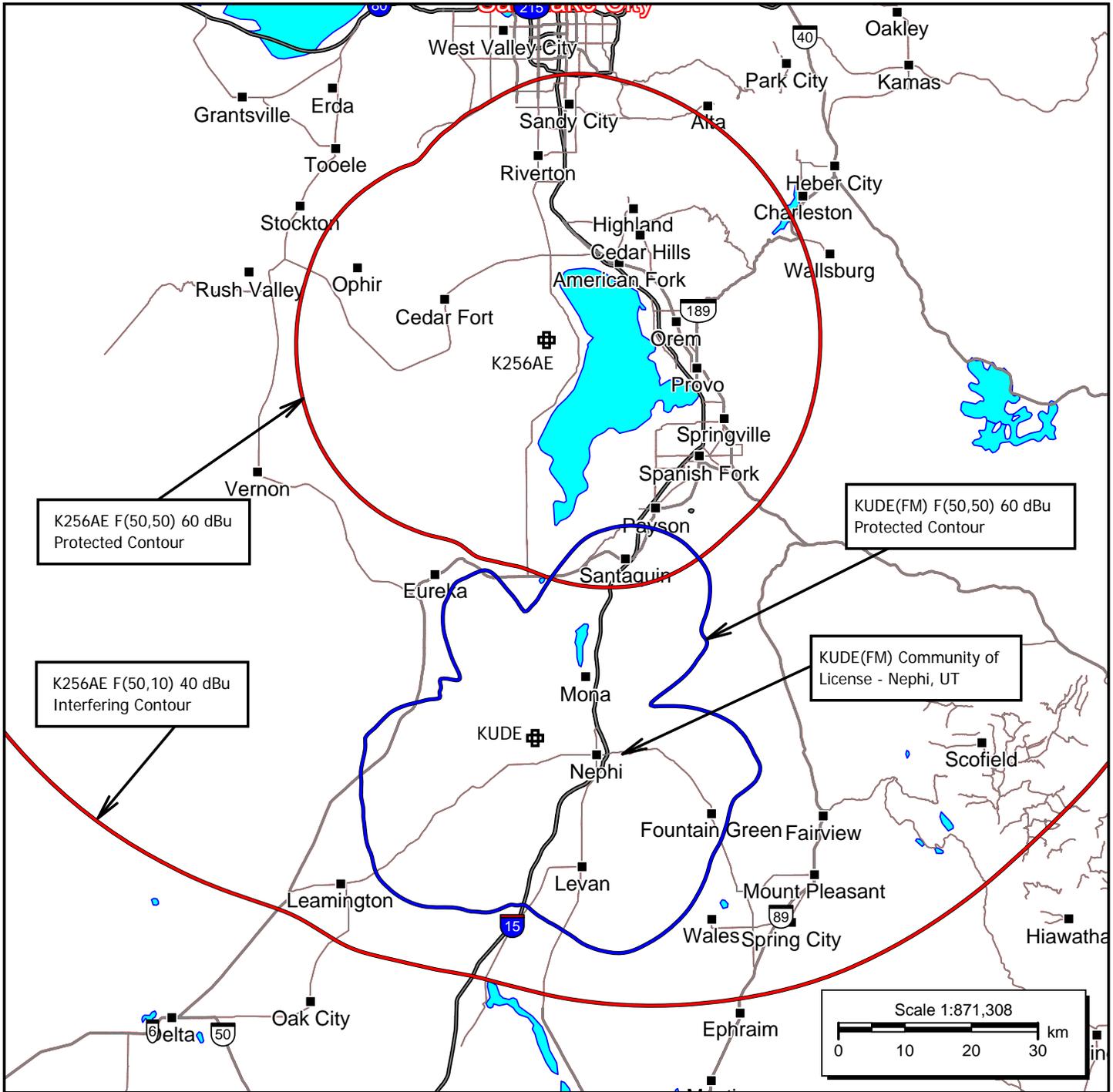
Terrain database is NGDC 30 SEC , R= 73.215 qualifying spacings or FCC minimum Spacings in KM, M= Margin in KM  
 Contour distances are on direct line to and from reference station. Reference zone= , Co to 3rd adjacent.  
 All separation margins (if shown) include rounding. Call signs with strikeout need not be protected.  
 Ant Column: (D= DA Standard, Z= DA 73.215, N= Not DA 73.215, \_= Omni), Polarization (C,H,V,E), Beamtilt(Y,N,X)  
 "\*"affixed to 'IN' or 'OUT' values = site inside restricted contour.  
 < = Station meets FCC minimum distance spacing for its class.  
 < = Contour Overlap

**EXHIBIT B**

**KUDE F(50,50) 60 dBu Protected Contour**

**vs**

**K256AE F(50,10) 40 dBu Interfering Contour**

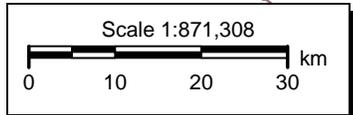


K256AE F(50,50) 60 dBu Protected Contour

K256AE F(50,10) 40 dBu Interfering Contour

KUDE(FM) F(50,50) 60 dBu Protected Contour

KUDE(FM) Community of License - Nephi, UT



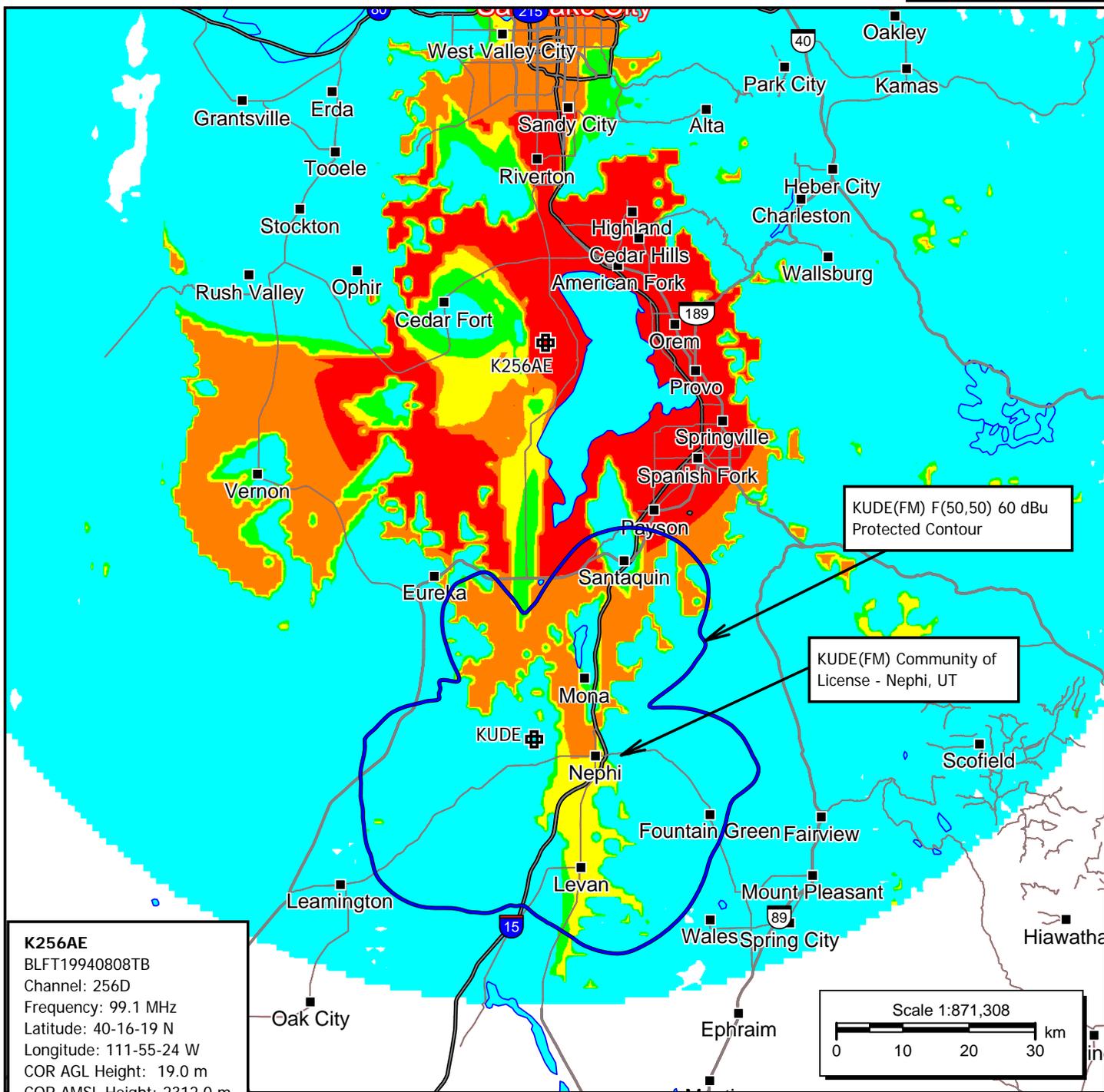
**KUDE**  
 BLH20160831AAJ  
 Channel: 256A  
 Frequency: 99.1 MHz  
 Latitude: 39-43-58 N  
 Longitude: 111-56-35 W  
 COR AGL Height: 132.0 m  
 COR AMSL Height: 2050.0 m  
 Base Elevation: 1918.0 m  
 COR HAAT: 308.0 m  
 ERP: 0.64 kW  
 Horiz. Pattern: Omni  
 Vert. Pattern: No  
 Prop Model: None

**K256AE**  
 BLFT19940808TB  
 Channel: 256D  
 Frequency: 99.1 MHz  
 Latitude: 40-16-19 N  
 Longitude: 111-55-24 W  
 COR AGL Height: 19.0 m  
 COR AMSL Height: 2312.0 m  
 Base Elevation: 2293.0 m  
 COR HAAT: 814.0 m  
 ERP: 0.25 kW  
 Horiz. Pattern: Omni  
 Vert. Pattern: No  
 Prop Model: None

KUDE(FM) F(50,50) 60 dBu Protected Contour  
 Population Report  
 Total Population: 24,718  
 Coverage Area: 2,560.1 sq. km  
 Population Database: 2014 US Census Estimate

**EXHIBIT C**

**Longley-Rice Coverage**  
**K256AE Provo, UT**

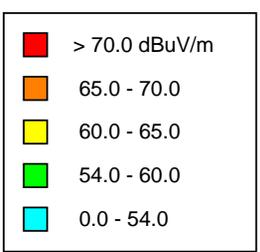
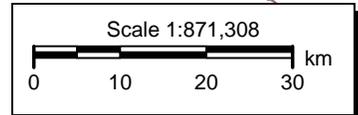


KUDE(FM) F(50,50) 60 dBu  
Protected Contour

KUDE(FM) Community of  
License - Nephi, UT

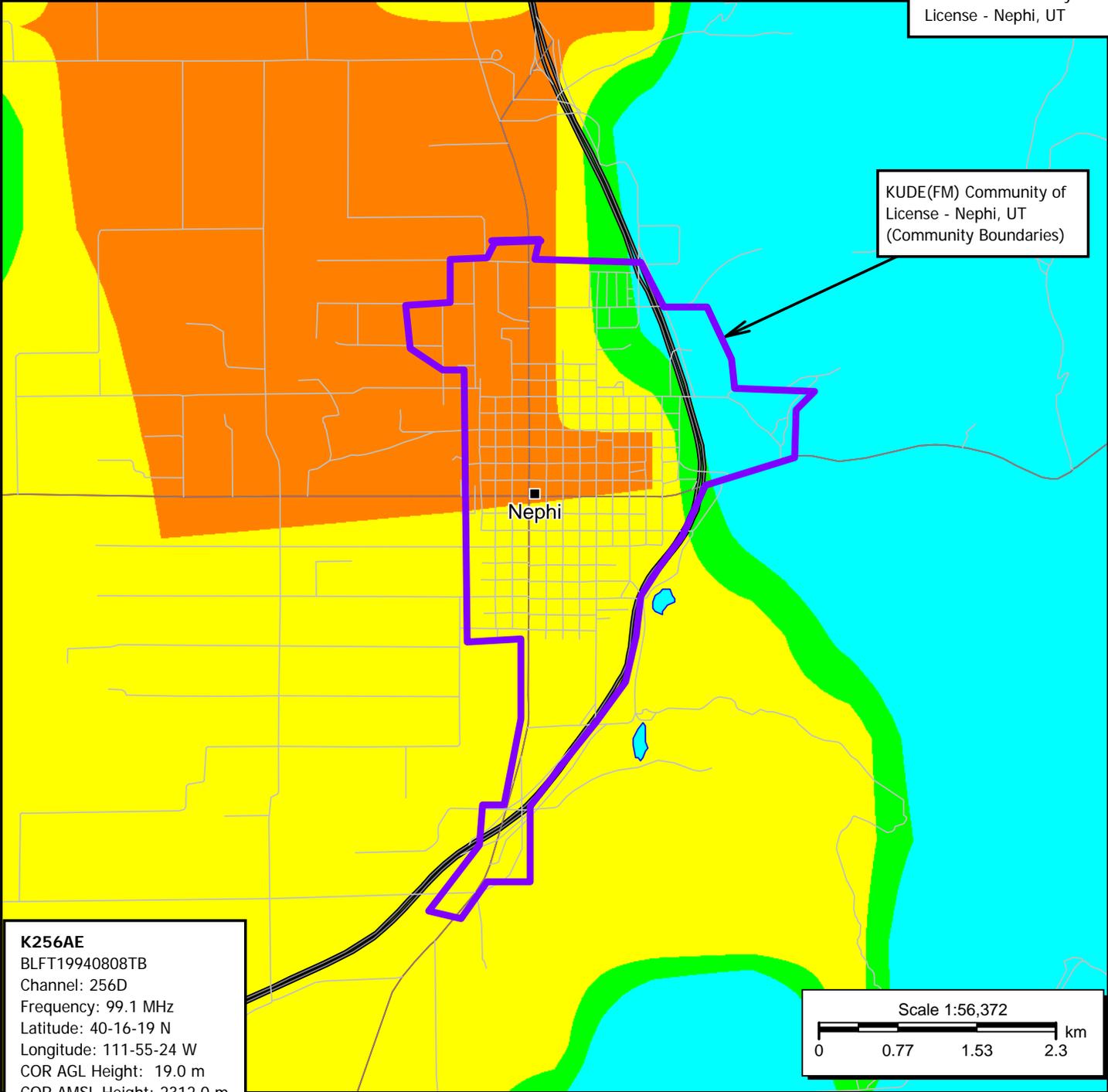
**K256AE**  
 BLFT19940808TB  
 Channel: 256D  
 Frequency: 99.1 MHz  
 Latitude: 40-16-19 N  
 Longitude: 111-55-24 W  
 COR AGL Height: 19.0 m  
 COR AMSL Height: 2312.0 m  
 Base Elevation: 2293.0 m  
 COR HAAT: 814.0 m  
 ERP: 0.25 kW  
 Horiz. Pattern: Omni  
 Vert. Pattern: No  
 Prop Model: Longley-Rice  
 Climate: Cont temperate  
 Conductivity: 0.0050  
 Dielec Const: 15.0  
 Refractivity: 311.0  
 Receiver Ht AG: 9.1 m  
 Receiver Gain: 0 dB  
 Time Variability: 50.0%  
 Sit. Variability: 50.0%  
 ITM Mode: Broadcast

**KUDE**  
 BLH20160831AAJ  
 Channel: 256A  
 Frequency: 99.1 MHz  
 Latitude: 39-43-58 N  
 Longitude: 111-56-35 W  
 COR AGL Height: 132.0 m  
 COR AMSL Height: 2050.0 m  
 Base Elevation: 1918.0 m  
 COR HAAT: 308.0 m  
 ERP: 0.64 kW  
 Horiz. Pattern: Omni  
 Vert. Pattern: No  
 Prop Model: None

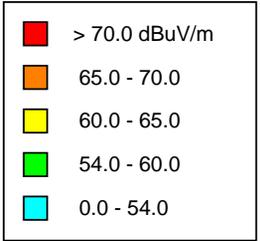
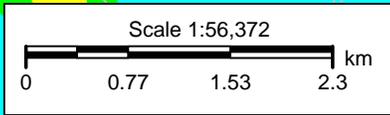


Longley-Rice Coverage of  
Translator K256AE  
In KUDE Community of  
License - Nephi, UT

KUDE(FM) Community of  
License - Nephi, UT  
(Community Boundaries)



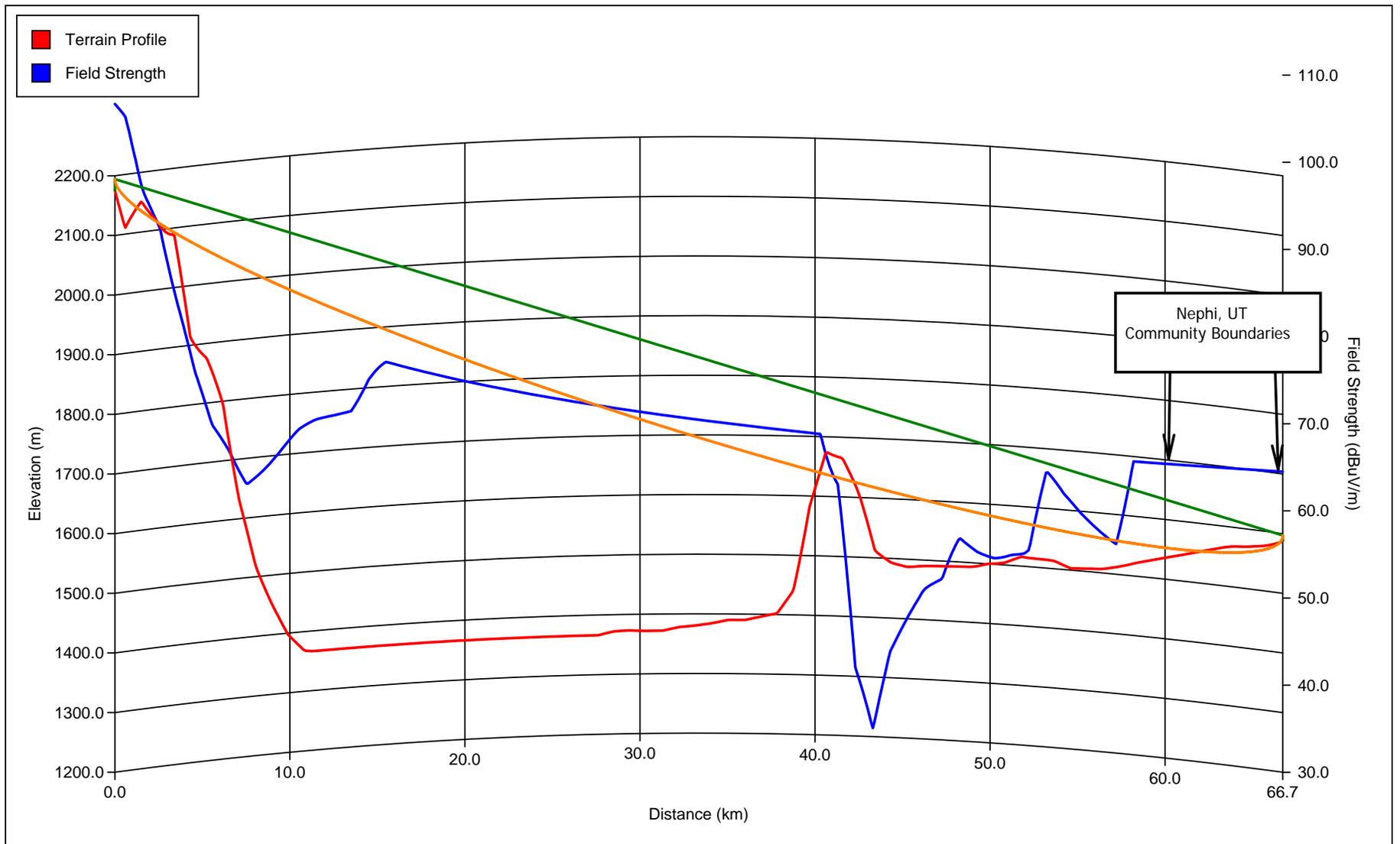
**K256AE**  
BLFT19940808TB  
Channel: 256D  
Frequency: 99.1 MHz  
Latitude: 40-16-19 N  
Longitude: 111-55-24 W  
COR AGL Height: 19.0 m  
COR AMSL Height: 2312.0 m  
Base Elevation: 2293.0 m  
COR HAAT: 814.0 m  
ERP: 0.25 kW  
Horiz. Pattern: Omni  
Vert. Pattern: No  
Prop Model: Longley-Rice  
Climate: Cont temperate  
Conductivity: 0.0050  
Dielec Const: 15.0  
Refractivity: 311.0  
Receiver Ht AG: 9.1 m  
Receiver Gain: 0 dB  
Time Variability: 50.0%  
Sit. Variability: 50.0%  
ITM Mode: Broadcast



**EXHIBIT D**

**Profile:**

**K256AE Antenna to Nephi, UT**



Start Latitude: 40-16-19 N  
 Start Longitude: 111-55-24 W

End Latitude: 39-40-29.19 N  
 End Longitude: 111-50-11.35 W

Distance: 66.72 km  
 Bearing: 173.59 deg

**EXHIBIT E**

**Google Earth Map:**  
**K256AE Licensed Site**

**vs.**

**94.9 Tower Site (site where K256AE operates)**

# K256AE Sites

Licensed Site vs Unlicensed Site

Saratoga Springs

94.9 Tower Site (K256AE Unlicensed Operation)

K256AE Licensed Site

