

The fiduciary responsibility to its programmers was not taken lightly by KENR Management and the decision was made to put forth every effort possible to find an alternative place on the AM dial for KENR Management's programmers to produce their programming. KENR Management commenced conversations with several Houston area radio stations concerning the possibility of another LMA to replace that on KENR; however, no other licensee was receptive to KENR Management's offers.

It was at this point that KENR Management began conversations with Salem regarding an extension of its KENR LMA and to look at potential move-in AM's outside the immediate Houston market. Given the fact that Salem had paid \$2.75-million for KENR, KENR Management knew that no long term LMA extension with Salem would be financially possible. Hence, KENR began discussions with Salem principal Stewart Epperson regarding a short term, one year extension of its Susquehanna LMA in order to give it time locate and move an AM in order to have the coverage to support its programming. During the month of November, 1994 and early December, Mr. Epperson gave KENR Management President Don Werlinger repeated verbal assurances that Salem would entertain such an extension but stated that he would not commit to an agreement until a decision was made on who would manage the Houston properties purchased by Salem.

In the meantime, an accomplished propagation engineer whose work has resulted in dozens of AM and FM allocation changes and construction permits, set about a detailed allocation study in an attempt to locate an AM with a potential for covering the Houston metro. In mid December, Mr. Werlinger discovered KIOX (now KFCC) in Bay City, Texas. Operating with 1.0 kw, non-directional on 1270 kHz, KIOX placed a 0.50 mV/m contour over approximately 15% of the Houston metro from its site in Bay City. It also suffered a tremendous amount of overlap of its 0.50 mV/m contour from KWHI (1280 kHz, 1 kw-ND, D) at Brenham. Werlinger determined that, by relocating the KIOX transmitter site, increasing power, and utilizing a directional antenna system, KIOX could be improved to cover both the Bay City and Houston markets, thus accomplishing KENR Management's goal of maintaining a platform for its international language programmers.

Werlinger developed a three pronged plan. First, a new corporation would be formed which would make an offer to purchase KIOX which resulted in the formation of Chameleon Radio Corporation. At the same time, Werlinger determined to work diligently with Salem on a one year extension of KENR Management's LMA on KENR since Werlinger was aware that it would take six months or longer to first obtain the KIOX license and then to obtain the construction permit (CP) necessary to make the changes in KIOX. Finally, once KIOX was purchased, KENR Management would remain programming KENR while the KIOX CP was obtained and the new facility constructed.

Without being specific as to which station was to be purchased, Werlinger related his plan to Mr. Epperson of Salem who agreed the plan had merit and again stated Salem's desire to work with KENR Management on an extension of its KENR LMA. In late December, 1994, Mr. Epperson introduced Jarnie Clark as the individual who would be operating Salem's AM/FM operation in Houston.

Werlinger and Clark met twice at KENR Management's offices in December, 1994. During the first meeting which occurred on or about December 21st, Werlinger explained his company's business to Clark and explained his plans to take his programming concept to a station he would purchase. At that meeting, Mr. Clark stated he was impressed with "what you've built here," and expressed his interest in Salem's purchase of KENR Management's programming contracts. Clark said he was returning to Salem's California headquarters but would be back in Houston in a week to further discuss the entire situation.

On Clark's second visit which occurred on or about December 28, 1994, he asked to examine KENR Management's contracts and was allowed to do so. Although reluctant to allow the inspection, Werlinger knew that as the licensee, Salem would have the right to examine the paperwork, so it was allowed. It was after his inspection of the contracts that Clark first stated that he was certain Salem would have no interest in purchasing all the programming from KENR Management since a number of programmers represented non-Christian faiths (Hindu, Muslim, etc.) which would not fit with Salem's plans for Christian programming for at least part of the day on KENR.

Clark suggested that, instead of entering into an LMA extension, that Salem would rather hire Werlinger as an independent contractor who would place programming (supposedly programming from KENR Management) on KENR. It became clear during the conversation that Clark had an interest in acquiring most of KENR Management's English language and secular international language programming but was not interested in any programming which was religious and non-Christian in nature. While such religious programming represented only 25% of KENR Management's total airtime commitments, numerically, the majority of programmers would be effected and would be left with no place to produce their programming.

Werlinger told Clark he had no interest whatever in becoming an agent for Salem. He restated his interest in entering into a one year extension of the LMA he had with Susquehanna so as to have the time necessary to acquire another station upon which to place his programming. However, the offer to acquire Mr. Werlinger's services as an agent of Salem would resurface four more times prior to May 8, 1995. Each time Mr. Werlinger would politely refuse the offer. In light of the record since that time, it is now clear that Mr. Clark returned to California at the end of December, 1994 and developed a business plan for KENR which included a large portion of KENR Management's programmers.

In the four weeks which followed, KENR Management learned that Salem planned to consummate its purchase of both KENR and KKZR on March 3, 1995 in Washington, DC. Through a series of conversations with Susquehanna vice president Charles Morgan and Salem principal Stewart Epperson, it was decided that Susquehanna's LMA with KENR Management would be extended from February 3, 1995 to March 3, 1995 under the same terms as before the termination notification in November, 1994. On March 3, 1995, a one year LMA was to be executed with Salem which was identical to the Susquehanna LMA with two exceptions. The first was that the LMA could be terminated upon a 30 day notice. The second was that the monthly LMA would increase to \$20,000.00 from the \$15,000.00 in the Susquehanna LMA. Though 25% more expensive than the Susquehanna LMA, the one year LMA with Salem would allow KENR Management the time necessary to provide itself with another outlet upon which to place its programmers and continue the service it had begun nearly a year earlier.

In early February, the principals of KENR Management Company, Inc. operating under the name Chameleon Radio Corporation, agreed with Landrum Enterprises, Inc., the licensee of radio station KIOX, Bay City, Texas to purchase that facility. The plan was to first purchase the station and then present the Commission with an application to change the station's city of license to Missouri City, Texas utilizing a new transmitter site, a directional day/night antenna system to remove much of the previously licensed overlap with KWHI, Brenham, Texas, and dramatically increase the population covered by the 0.5 mV/m contour of the station. During the application and construction process, KENR Management/Chameleon would rely on its one year LMA with Salem to maintain its outlet for its international language programmers. The application seeking transfer of the KIOX license was tendered February 17, 1995.

KIOX (KFCC) was an excellent facility for KENR Management's plans. It was one of three (each separately owned) broadcast facilities licensed to Bay City. Its removal to another city of license closer to Houston would leave Bay City with two broadcast outlets, both Class C FM's, and KIOX could become the first service for a community with a much larger population (Missouri City) closer to Houston. In the process, it could dramatically reduce the previously licensed overlap to KWHI in Brenham, Texas.

KIOX had either been simulcasting with its sister FM station or carrying the audio portion of CNN Headline News for a number of years. It had long since ceased to be a local presence in its community of license and had it not been for ability of its sister FM to cover its operating expenses, KIOX might well have already gone the way of more than two dozen other once thriving Texas AM stations and ceased to exist.

As planned, the Susquehanna/Salem transfer of the KENR license took March 3, 1995 with KENR Management continuing its programming on the station. On March 6, 1995, KENR Management concluded a one year LMA with Salem and through sister company Chameleon Radio, was awaiting the transfer of the license on KIOX. During

this time, Chameleon was actively engaged in searching for a suitable transmitter site southwest of Houston in order to have a form 301 request ready to present to the Commission as soon as the purchase of the facility could be consummated.

On April 5, 1995, Don Werlinger met at the Houston offices of Salem with Jamie Clark. It was on that date Werlinger told Clark that his company in fact, applied to purchase a station which he planned to relocate and move his programmers. Mr. Werlinger told Mr. Clark that he hoped to have the application filed by May 1st and to have a construction permit for the change by August and have construction completed and be on the air in the early fall.

Clark expressed surprise as Werlinger's information. He said he had not heard of the purchase by Chameleon but stated that Werlinger's timetable "will probably fit what we doing here with getting the FM up and running." Since KKHT (formerly KKZR) was of course on the air, Werlinger took Clark's statement regarding 'up and running' to mean the format on the FM station.

The next day, April 6, 1995, Clark wrote the two sentence letter included as Exhibit: 2 and mailed it via first class mail. As the exhibit shows, only one month into a one year agreement, with no violation of that agreement on the part of KENR Management, Salem, in violation of Section 28 of that agreement (included herewith as Exhibit: 3). Section 28 of the agreement is the "Notice" section which states; "any notice required hereunder shall be in writing and any payment, notice, or other communication shall be deemed given when delivered personally, or mailed by certified mail or Federal Express, postage prepaid...". Inasmuch as the "notice" sent from Clark's office to KENR Management was delivered on Monday, April 9th, via ordinary first class mail and not personally, certified mail, or Federal Express, KENR Management elected to ignore the effective date of 12:00 am, Sunday, May 7, 1995.

Two days later, April 11, 1995, Werlinger was contacted by a programmer who indicated he had been approached by Jamie Clark regarding programming on KENR after May 7th. Such contact was clearly in violation of Section 13 of the LMA; however, inasmuch as Salem paid not attention to the Notice provisions of the contract, a simple prohibition against tampering with KENR Management's clients would mean little.

The situation became clear; prior to Werlinger's conversation with Clark on April 5th, Salem had been under the impression that KENR Management would be unable to find another facility to which he could take his programmers and, at a time convenient to Salem, it could simply give KENR Management notice of termination and take the programmers it wished to keep, those which would pose no problems with its more numerous Christian programmers, and disregard the rest. When Werlinger disclosed on April 5th that a facility had been purchased and laid out a reasonable time table for accomplishing his stated goal of moving his programmers to that new facility, it became apparent to Salem that KENR Management did indeed have a viable alternative. If the opportunity to cherry pick KENR Management's list of clients were to be realized, it had

to occur quickly, hence the letter of termination dated April 6th, signed not by an officer of the corporation, but a hireling, and issued so quickly that no attention was paid to proper delivery to conform to the terms of the contract.

It was at this point that KENR Management made two key decisions. First, it elected for the time being to ignore Salem's "letter of termination." Secondly, the company moved ahead with all haste toward finding an acceptable transmitter site in southwest Houston to which it could move. A site was found in rural Harris County between the cities of Houston, Missouri City, and Stafford which would accommodate the daytime antenna array, but which at least initially, looked as though it would not work for the night array.

In order to accommodate the night pattern, KENR Management commenced negotiations with the U.S. Army Corps of Engineers to make use on a lease basis, of a portion of the Addicks Reservoir just west of Beltway 8 and north of Interstate 10. Though Corps personnel were very accommodating and made a diligent effort to find an area inside the reservoir, no suitable location could be found and it was decided to place the night array with the day array at the Riceville School Road site (See: Form 301 with exhibits).

KENR Management/Chameleon realized it was dealing with a predatory entity in Salem Communications and that it now had only a matter of weeks (not months as previously planned) before it had to be in place with another facility. The only possible chance for remaining a viable company lay in somehow receiving permission to make a change in the KIOX transmitter site through temporary authority and then presenting a completed FCC form 301 at a later date.

The decision was made to seek Special Temporary Authorization (STA) to relocate the KIOX (KFCC) transmitter site to the southwest Houston location while the Form 301. Immediately following closing on April 20, 1995, Chameleon sought an STA for the Houston site with a request for 1,000 watts daytime and 250 watts at night. The proposal sought to construct a new tower at the site which would become a part of what was then believed would be a three tower array. Eventually, in order to accommodate the night array, a fourth tower was utilized in the proposal.

John Vu, a member of the FCC's AM Branch staff, indicated he could grant an STA for the site, but would not allow the construction of a new tower for that purpose. Mr. Werlinger, who had either been a principal or a consultant in a number of STA requests through the years, reminded Mr. Vu of the fact that his predecessor, May Bradfield, had routinely granted construction of new towers in such cases. In fact, it is a virtual impossibility to use anything other than a newly constructed tower in AM STA's inasmuch as the guywires on any AM tower must be insulated with in-line insulators in order to accommodate the AM antenna.

Though Mr. Werlinger repeatedly argued his case with Mr. Vu regarding the tower construction. He pointed to several STA's in which he was aware that Ms. Bradfield had routinely granted minimum tower construction. He indicated that he had sought at least verbal clearance with the Federal Aviation Administration's Southwest Regional Office in Ft. Worth and had been assured by Bruce Beard of the FAA that the proposed 180' tower would not violate FAA minimums and as far as the FAA was concerned, there wasn't even the need for filing an FAA form 7460-1. Mr. Werlinger did; however, file the form to be conservative. Mr. Vu remained adamant that no new construction could take place.

During the course of a conversation on Tuesday, April 26, 1995, with Joe McClish of Economy RF Construction Company, an Austin, Texas communications tower erection company, Mr. McClish asked Mr. Werlinger if he (McClish) would be prohibited from erecting a tower 180 feet in height and leasing the tower to Chameleon once and if the STA were permitted. Mr. Werlinger relayed the FAA's opinion that a tower of that height would need no FAA filing. He also made it clear to Mr. McClish that he (Werlinger) had no authority from the FCC to commission construction of a tower and could not commit KIOX (KFCC) to using any such tower until and unless the STA was granted.

Mr. McClish stated he was aware of the fact that he was at risk of constructing a tower for which he would have no immediate tenant unless the STA request by Chameleon was approved. Nevertheless, he stated that if Chameleon would grant use of its land (which Chameleon held under a lease/purchase agreement) on a reasonably priced basis, his company would like to erect a tower and rent space to other tenants if Chameleon could not make use of the tower. Werlinger agreed and McClish stated he would have a tower erected prior to May 1, 1995.

On Saturday, April 29th, Mr. McClish drove from Austin and did the preparation work for the tower including pouring concrete foundations. By Monday, May 1, 1995 the Rohn model 25 tower was in place; however, nothing relating to a broadcast tower was on the site with the exception in line insulators in the guywires. All work was done at McClish's expense. No funds were passed from Chameleon or any principal in Chameleon toward the construction of the tower. In fact, nothing relating to broadcast equipment was placed on the site until after the grant of the STA. The folded unipole and ground system were installed on the tower owned by McClish following grant of the STA.

Although Mr. McClish had reasonable assurance from Chameleon that they would have a use for the tower in the not distant future, until the STA was actually granted, Mr. McClish had constructed a tower at his own risk with no funding from Chameleon and no formal agreement that any use of the tower would be made by KIOX (KFCC) prior to grant of the STA.

The tower was on land held under a lease purchase agreement by Chameleon; therefore, when Mr. Werlinger reported to Mr. Vu on Monday, May 1, 1995 that a tower was on the land and available for use by Chameleon, he in fact, was reporting the truth.

It was Friday, April 28, 1995 that Mr. Werlinger first heard from Jamie Clark regarding the April 6th "termination notice." Other than the first class mailed letter, nothing had been heard from Salem since Mr. Werlinger met with Mr. Clark on April 5th. In his telephone call on April 28th, Mr. Clark stated that he was calling to "start getting things wrapped up before we take over next week."

Werlinger stated he didn't know what Clark was talking about whereupon Clark referred to the letter. Mr. Werlinger stated that, even if KENR Management had received a letter from Salem, such a letter was delivered not by the terms of the contract, but rather by first class mail and as a result, KENR Management did not regard the letter as proper notice. Mr. Werlinger stated that Salem would be receiving KENR Management's notice of termination on Monday, May 1st and that KENR Management would consider the May 31st date the final day of the LMA. After some protestations, Mr. Clark told Mr. Werlinger that KENR Management would be hearing from Salem's legal counsel and hung up. No communication was forthcoming from Salem for the next six days.

That same day, April 28, 1995, KENR Management indeed issued a termination notice to Salem Communications, delivered properly on May 1, 1995, terminating the contract as of May 31, 1995. The reasoning behind the termination notice from KENR Management was Mr. Werlinger knew that, while Salem might argue that their letter had been a notice to terminate, it clearly violated terms of the LMA. Werlinger's presentation and proper delivery of a May 31st termination letter would clearly establish a date later than May 6th as the final date of the LMA.

At that point, Mr. Werlinger had an assurance from John Vu at the FCC that he (Vu) would issue an STA, but the question of a tower was still unanswered.

On Thursday, May 3rd, KENR/KFCC employee Vickey Scott was informed by a programmer that the programmer intended not to pay its May programming commitment because, "you (KENR Management) will not be on the air after Saturday night." When Ms. Scott asked the source of the programmer's information, she was told that the programmer had received the information from Jamie Clark.

When informed of this information, Mr. Werlinger telephoned Jamie Clark to warn Mr. Clark that contact by Salem to solicit business from KENR Management programmers was prohibited by Section 13 of the LMA. Mr. Werlinger demanded that Mr. Clark cease such contact where upon Mr. Clark denied initiating any contact with any KENR Management client and categorically any attempt to maneuver any clients away from KENR Management, a denial which would later be proved to be untrue.

However, he also told Werlinger that Salem intended to terminate the LMA as of Midnight, Saturday, May 6th and had no concern at all regarding Mr. Werlinger's warning against tampering.

Mr. Werlinger immediately contacted KENR Management counsel Ray Fisher in Austin, Texas regarding the situation. Mr. Fisher informed Werlinger that one option open to KENR Management was to attempt to secure a temporary restraining order against Salem enjoining Salem from terminating the agreement.

On Friday, May 5, at approximately 3:30 pm, state district judge Catherine Kennedy issued a temporary restraining order which was to hold until a hearing on the evidence in the case could be held on Monday, May 8th. Following the judge's ruling, Mr. Werlinger appeared at the Salem offices to offer a compromise, suggesting that Salem and Chameleon split the 22 remaining days in May down the middle with Chameleon remaining in place and programming KENR until midnight, May 19th and Salem assuming complete operation of the station at that point. Under that plan, said Werlinger, the programmers now on KENR would have time to inform their audiences that a move to 1270 kHz was underway and make a smooth transition. Mr. Clark told Mr. Werlinger that Salem would accept such a plan only if KENR Management would agree to a price of \$25,000.00 for the 19 days of programming. Werlinger flatly refused to discuss what he considered extortion (under the \$20,000 a month agreement, the 19 days would have netted Salem \$12,258.06) and informed Mr. Clark he would see him in court on Monday.

Approximately an hour prior to Judge Kennedy's issuance of the temporary restraining order, John Vu at the FCC had issued the STA sought by Chameleon for the Riceville School Road site, granting 1,000 watts day and 100 watts night operations for KIOX (KFCC).

Immediately upon grant of the STA, a group which included family, friends, employees, and volunteer programmers set about erecting the broadcast site for KFCC's temporary authority to operate in southwest Houston. By midday Sunday, May 7th, the transmitter had been placed in a portable building, necessary program lines had been established. The ground system and folded unipole had been installed on the tower, and KFCC had the ability to operate from the site. There had been no confidence that Salem would abide the terms of the temporary restraining order, an around the clock effort was made to bring the transmitter site to operational status. On Monday morning, May 8, 1995 at 6:00 am, the new site was turned on and KENR Management and Chameleon began simulcasting programming which was being fed to KENR on KIOX (KFCC). Programmers were informed that they should begin informing their listeners about the move to 1270 kHz and all programmers began taking such action. Both stations were identified properly at the top of each hour.

That same afternoon when the two sides met at the Harris County Courthouse, Salem's attorney approached Mr. Werlinger and Fisher and asked if a settlement might

be reached prior to the scheduled 1:30 hearing. Mr. Werlinger restated his Friday plan under which KENR Management would be allowed to continue its programming through May 19th, leaving the station to Salem thereafter and paying a per diem based upon \$20,000 for the full month.

Through several back and forth conversations, Salem stated through its attorney that it would accept such a compromise if KENR Management would be a fee of \$15,000.00 for the 19 days. After consultation with attorney Fisher, Mr. Werlinger agreed to pay the higher amount in order to remain a programmer through May 19th, giving his programmers time to make a reasonable transition from 1070 kHz to the new 1270 kHz location.

During the course of the negotiations, no mention was made by either Salem's counsel or by Jamie Clark, who was present, that Salem had any problem with Werlinger's stated goal of announcing on KENR that programming was moving to the new frequency. However, Clark informed Werlinger that one of KENR Management's clients, a Vietnamese language program which originated at the Vietnamese owned studios and was fed to the KENR Management studios via telco loop, had terminated their loop to the KENR Management studios on Friday, May 5th, and had reestablished the loop to the Salem studios that same day. Mr. Clark assured Mr. Werlinger that Salem would place the program on the air from the Salem studios for the two weeks until May 19th, removing the telco feed from the KENR Management studios at exactly 2:00 pm, placing the Vietnamese program on the air and then returning KENR Management to the air at 6:00 pm.

Shortly after the conversation with Mr. Clark, both parties appeared before a state district court judge and entered the agreement into the court's records. Mr. Werlinger handed Mr. Clark a check in the amount of \$15,000.00 and returned to his offices to begin contacting programmers and informing them of the settlement. Over the next six hours, the more than forty programmers on the station were contacted and told a settlement leaving KENR Management's programming in place on KENR through Friday, May 19th had been reached and offering whatever assistance possible in assisting those programmers with the change.

As events over the next 24 hours would show, this was nothing more than another Salem trick. Actually, Salem had already contracted with the Voice of Vietnam (VOVN) for airtime commencing at 4:00 pm in the afternoon, not the 2:00 pm start under the KENR Management contract with VOVN.

In any event, this revelation that the Voice of Vietnam (VOVN) broadcast would be delivered to the Salem studios beginning that day was proof positive that Salem had indeed been tampering with KENR Management clients. Relocating a telco loop through Southwestern Bell takes 10 to 12 working days which means VOVN would have had to have placed their order to drop their loop to the KENR Management studios and establish the loop to the Salem studios some five miles away during the week of April 24 thru the

29th in order to have a working line on May 8th. VOVN needed and obviously received solicitation from Salem to make such a change.

Jamie Clark lied when he claimed Salem had not tampered with KENR Management's client base. His actions on behalf of Salem created the crisis in which KENR Management/Chameleon found themselves and they were to continue. They continue to this day.

Although KENR Management had often worked with VOVN on receipt of payment for its airtime, taking late payments and even reducing fees in order to keep the Vietnamese program on the air, the situation now was different. Werlinger told VOVN that payment must be received for May 1st thru May 19th or VOVN would not be allowed on the air. A VOVN spokesman assured Werlinger that payment would be forthcoming before noon. When the promised payment was not received by 12:45 pm, Werlinger called the Salem offices and asked to speak with Mr. Clark to inform him that VOVN would not be on the air that afternoon. Mr. Werlinger was informed that Mr. Clark was in a conference and could not speak with Werlinger just now.

At 2:00 pm, Salem removed KENR Management's programming from the air and commenced a simulcast of the Oliver North talk show with its sister FM (KKHT). Repeated calls from Werlinger to the Salem offices resulted in no response from Mr. Clark. KENR Management had been removed from the air in direct violation of an agreed court order reached and entered into state district court records less than one day earlier.

At 3:15 pm, Werlinger drove the five miles to the Salem offices where he receive a one paragraph letter from Mr. Clark which stated that KENR Management was in violation of its contract with Salem as a result of its identifying another radio station on KENR and as a result, KENR Management was being removed from the air immediately. Following the end of the Oliver North Show, VOVN commenced programming in its new time slot on KENR.

No one can read the events which occurred during this time and come to any other conclusion than Salem Communications was exercising every means possible to destroy KENR Management/Chameleon. Only around the clock efforts on the part of virtually everyone involved prevented Salem's success in this enterprise. But, Salem was far from finished in its efforts.

With its loss of KENR as of 2:00 pm, Tuesday, May 9th, KENR Management was once again faced with going to its programmers to explain what had been intended to be a mortal blow by Salem. In the days that followed, only two other programmers followed VOVN to Salem, much to Salem's obvious dismay. Programmers reported repeated contacts from Mr. Clark offering a wide variety inducements to secure their return to 1070 AM. It should be remembered that all the programmers with KENR Management had been on 1070 AM, the place to which Mr. Clark was now attempting to lure them

back. And, with only a few exceptions, all decided to make the change with now Chameleon Radio Corporation to KFCC. But again, Salem was not finished.

On Friday, May 12th, John Vu contacted Mr. Werlinger by telephone and informed him that the Commission had received complaints regarding interference to KWHI at Brenham, Texas and as a result, he was reissuing the STA to reduce KFCC's power to 300 watts daytime and 50 watts at night. Mr. Werlinger asked Mr. Vu if the complaint had come from KWHI and whether they had been received at the Houston Field Operations Office of the FCC or in Washington. Mr. Vu replied that the complaints had been by telephone to the AM Branch in Washington and he was unsure of who was filing the complaints. He said he was simply responding to the protest.

The following Monday, Mr. Fred Lundgren, who had been acting as project manager on the STA construction project, telephoned Mr. Tom Whitehead, the licensee of KWHI to discuss what Mr. Lundgren assumed to be Whitehead's complaints. Mr. Whitehead told Mr. Lundgren that he was completely unaware of the STA operation of KFCC and that he personally had heard of no listener complaints regarding increased overlap between the 1270 kHz and 1280 kHz signals. He suggested; however, that his son, Mark Whitehead, who serves as the chief engineer for KWHI might know more.

Mr. Lundgren contacted Mark Whitehead at his office in Bryan, Texas. Mark Whitehead stated that he had been aware of some moves on the part of KFCC, but that he also had received no complaints from listeners. The conversations with both men were very cordial and both Tom Whitehead and his son, Mark, indicated they had filed no complaint.

Mr. Lundgren assured both men that Chameleon was working diligently to complete a form 301 request which would use a directional antenna to remove not only any potential new overlap between the two stations, but virtually eliminate any previously licensed overlap. Lundgren stated that Chameleon was keenly attuned any potential problems the STA operation might cause to KWHI and offered to take steps necessary to remove potential problems.

Instead of talking to the licensee of KWHI, Chameleon should have suspected the by now familiar presence of Salem. After operating seven more days, on Monday, May 22nd, Chameleon received a fax from Mr. Vu ordering KFCC to cease operations at its STA site due to the lack of a city grade signal over KFCC's city of license, Bay City, (Mr. Werlinger would return later that week from Washington, D.C. to find Salem's protest in his mail).

It was only after very careful consideration that Mr. Werlinger made the decision to disregard Mr. Vu's order. The fact of the matter was KFCC continued then as it does now, to be the only outlet in Houston for dozens of international language programmers. At the time of Mr. Vu's order, the Voice of Greece program was promoting the city's largest ever Greek cultural concert, an annual event in other large cities which features

bands and performers from Greece on tour in the U.S. It is also an event which, until this year when radio promotion was possible, had not made a stop in Houston, Texas. Other programmers such as Radio South Asia were planning cultural events. The Voice of Sanatan Hinduism was covering the completion of a new Hindu worship center, and the list went on. In its opinion, Chameleon's responsibilities to its programmers outweighed the potential adverse consequences of not complying with the May 19th letter rescinding the STA.

At 6:00 am Tuesday, May 22nd, Mr. Werlinger boarded an airplane for Washington, D.C., his mission to convince whomever he needed to convince at the FCC that the order rescinding the STA must be overruled. Following the chain of command, Werlinger met first with John Vu and his immediate supervisor prior to being introduced to AM Branch Chief James Burtle. In his meeting with Mr. Burtle in which he pointed out that a large number of currently operating AM STA's do not cover their respective cities of license with 5 mV/m contour and are yet allowed to continue to operate, Mr. Werlinger attempted also to point out that the 1000 watt STA came much closer to placing the required signal over Bay City than does the 300 watt STA. Mr. Burtle refused alter the decree to cease operation from the STA site.

Werlinger than turned to Audio Services Division Chief Larry Eads with whom he met on Thursday, May 25th. In his half hour long conversation, Mr. Werlinger explained many of the details of this letter including the fact that, at closing, Chameleon Radio Corporation leased the property in Bay City back to Landrum Enterprises, Inc. for purposes of operating KIOX-FM from the site. Mr. Werlinger explained it had never been the intention of Chameleon to continually operate from the Bay City site inasmuch as the original plan for KIOX (KFCC) was to relocate the transmitter site north and east of Bay City. The result of the conversation was an action by Mr. Eads staying the effectiveness of the May 19th order.

Meanwhile, back in Houston, Jamie Clark was making repeated calls to several KENR Management/Chameleon clients assuring them that KFCC would be off the air "in just a few hours," and exhorting them to purchase airtime back on KENR "while there is still space left for you." It should be noted that only secular programmers were contacted. None of the programmers on the station which represented religious beliefs other than Christian ever reported being approached by Salem.

In Washington, Mr. Werlinger left Mr. Eads' office stating first, that an application to make the transmitter site used in the STA a permanently licensed site would be forthcoming within a week; second, that the application would specify a 10 kw operation for KFCC and finally that he, Werlinger, knew of no objection to the STA site on the part of the licensee of KWHI in Brenham, Texas.

The form 301 request in fact, eleven weeks from being filed due mainly to the inability of Chameleon to secure a suitable site within the Addicks Reservoir for the night array. Though the cooperation of the Army Corps of Engineers was forthcoming, the

efforts to reach an agreement on a site inside the reservoir did not bear fruit. Urbanization in all areas immediately surrounding Addicks prevent a site nearby.

The form 301 was also delayed by the fact that in spite of its initial reaction to the KFCC STA, the licensee of KWHI had a change of mind and filed an objection to the STA operation. As it had its application and exhibits originally prepared, KFCC was prepared to propose a 10 kw daytime operation. Most, but not all of the currently licensed overlap between the two stations would have been eliminated by the 10 kw directional operation of KFCC. However, in fulfilling its verbally expressed commitment to Mr. 's Whitehead to respond to their concerns and following consultation with KWHI technical consultant John Furr of John Furr and Associates, the antenna system was redesigned and the power dropped to the 2.5 kw operation now proposed in the currently pending Chameleon application. Mr. Furr has received a copy of the currently pending application and he has indicated his review of the proposed facility shows virtual elimination of the .5 mV/m overlap between the two stations.

The enclosed documents clearly show Chameleon Radio Corporation was the licensee of KFCC when it made its initial request for STA. Closing occurred on April 20, 1995. Also enclosed is a copy of the lease agreement with option to purchase the land on Riceville School Road in rural Harris County, Texas upon which the current STA site and proposed permanent site now sits. That document was executed April 28, 1995.

It has been demonstrated in this correspondence, that it had been Chameleon's intention to make technical changes in KFCC through the routine course of filing a form 301 request and then constructing the approved facilities in time to be on the air prior to the termination of its one year LMA with Salem. But, a set of events occurred which simply made such action impossible. Faced with a ceaseless onslaught from Salem, Chameleon had no choice but to act quickly and decisively, making creative use of whatever rules presented themselves in order to save both its business and the outlet it had created for the international community in Houston to communicate with itself through free mass communication.

Salem has continually shown it will do virtually anything to reach its goal. It will make and then disregard any commitment including those made in district court, make any representation to Chameleon programmers it wishes to lure away whether true or not including tampering with those clients in direct violation of contractual commitments to the contrary, and complain about interference allegedly caused to radio stations in which it has no ownership interest.

Salem in fact, has no standing in the current STA extension request. It has no ownership interest in either KWHI, Brenham, Texas or KESS, Fort Worth, Texas; therefore, any question of prohibited overlap would in no way effect a Salem owned radio station. None of the principals with ownership interest in Salem live in Houston, Bay City, Brenham, Fort Worth, or KFCC's proposed city of license, Missouri City. In fact, none of Salem's principals even live in the state of Texas.

The proposed changes in KFCC in no way effect Salem's KENR facilities (KENR operates on 1070 kHz, KFCC on 1270 kHz). Salem's only interest in the current situation is that of a competitor who has thus far been thwarted in its efforts to destroy first KENR Management and now Chameleon, actions which face challenge in district court.

If ever there was an example of strike activity on the part of a licensee, Salem's activities represent a text book case. Salem first set up a situation in which its victim was forced to take dramatic steps to save itself from destruction and then it was Salem who cried foul when those steps were taken. Salem is without technical standing to interject itself into the current situation. Neither the current STA operation nor the proposed changes in the KFCC facilities create any technical impact on Salem owned facilities. Therefore, in its continuing litany before the Commission, Salem is attempting to use the Commission's rules to stifle competition. With its activities in the marketplace, Salem calls into question its own character and openly invites an examination of its qualifications to be a licensee. Salem is blatantly engaged in strike activity and should be held accountable for same.

With regard to overlap to KWHI, the currently operating KFCC STA site (300 watts non-directional) operation reduces the overlap of the 0.50 mV/m contours of the two stations by more than 50%; therefore, it is not possible to arrive at the conclusion that KWHI is being damaged by KFCC's STA operation. Additionally, if ever there was a meritorious proposal for decreasing grandfathered overlap, the currently pending KFCC application provides that example.

As currently licensed, KFCC and KWHI endure approximately 1,785 square miles of overlap between their respective .5 mV/m contours. KWHI's .5 mV/m is licensed to receive 3,465 square miles of overlap from the .25 mV/m contour produced from the licensed KFCC site at Bay city and KFCC is licensed to receive 5,123 square miles of overlap to its .5 mV/m contour from the .25 contour of KWHI.

In KFCC's current proposal, the daytime directional array would generate no new overlap between the .5 mV/m contours of the two stations. Rather, as proposed the currently licensed .5 mV/m overlap would be reduced to approximately 149 square miles (from 1,785 square miles as noted above), a reduction of 91.65% from currently licensed .5 mV/m overlap.

Additionally, the KWHI .5 mV/m contour would receive 83.6% less overlap from the proposed KFCC .25 mV/m contour (3,465 square miles now vs 568 square miles as proposed). KFCC's received overlap .5/.25 mV/m would be reduced by 65.33% (5,123 square miles vs 1,775 square miles as proposed).

Even with its limited 300 watt day/50 watt night STA operation, KFCC continues serve as a platform for international language programmers as does no other Houston area radio station. In fact, with its southwest side transmitter location, KFCC provides an interference free signal to several international enclaves which do not receive such service from KENR on 1070 kHz. The result is that KFCC remains a viable, and in many cases, the only broadcast alternative. In fact, the recent purchase and format change of KMPQ AM/KLTO FM in suburban Rosenberg resulted in the deprivation of programming to the Central and South American communities of southwest Houston. Though nearly a dozen stations in Houston provide programming to the Mexican-American community, only the programming on KMPQ/KLTO served the much smaller but still well represented Guatemalan, Costa Rican, Honduran, and El Salvadoran communities. No fewer than five of those programmers have now migrated to KFCC as well as programmers serving the Peruvian and Argentinean communities of South America.

And, it cannot be argued that programmers removed from the air by KFCC's loss of its STA would find another home elsewhere in the market. Salem does not covet the Islamic teachings represented by Radio South Asia's 'World Religion Day' broadcast and it obviously has no interest in the Hindu and Buddhist teaching represented in other KFCC programming. While no doubt, several of KFCC's secular, English language talk programs are of prime interest to Salem, the numerical majority of KFCC's programmers would have no place take their programming absent KFCC.

The conclusion to be drawn from all these circumstances is that, while KENR Management/Chameleon have gone to the outer limits in dealing with the Commission's rules regarding Special Temporary Authorization, each was only reacting to the predatory and destructive activities of Salem. The loss not once, but twice in less than six months of an LMA presented an extraordinary circumstances. Remaining patient under such circumstances would have guaranteed the destruction of an otherwise viable and profitable enterprise providing a needed service to a series of minority communities previously completely neglected in the market.

The argument that KFCC's STA sets a dangerous precedent is also to be rejected. Chameleon's activities resulted in the maintenance of unique and needed broadcast outlet in one of the nation's largest markets, not to mention providing the economic survival of yet another AM station which had previously produced no method of income necessary to sustain itself.

Finally, KFCC's proposed technical changes improve the first adjacent overlap problem with KWHI to the point of nearly eliminating all .5 mV/m overlap between the two stations. In addition, the proposed change in the city of license to Missouri City, Texas will provide one of the fastest growing communities in the southwest part of the nation with its first locally licensed broadcast station. As a result, KFCC's application deserves immediate study and quick action by Commission staff. In the meantime, KFCC should be allowed to continue to provide the service to the international

community it has been serving for more than a year through its predecessor KENR Management Company and now through Chameleon Radio Corporation.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Don Werlinger".

Don Werlinger, President

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a

Chameleon Radio Corporation
10865 Rockley Road
Houston, Texas 77099
(713) 564-1070 fax: (713) 564-8653

April 21, 1995

Office of the Secretary
Federal Communications Commission
P.O. Box 358165
Pittsburgh, PA 15251 - 5165

Re: Request for Special Temporary Authorization for KIOX AM at Bay City, Texas

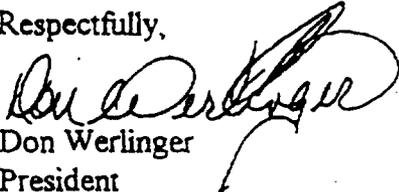
Dear Sir/Madam:

Transmitted herewith please find an original and two copies of a request for Special Temporary Authorization (STA) to relocate the transmitter site of AM station KIOX (call sign change to KFCC applied for) at Bay City, Texas.

FCC form 155 along with the required filing fee of \$115.00 are also enclosed.

If there are any questions regarding this request, please direct them to the address and telephone numbers above.

Respectfully,


Don Werlinger
President

cc: KIOX public inspection file

Federal Communications Commission	
Docket No. <u>96-173</u>	Exhibit No. <u>6</u>
Presented by <u>MMB</u>	
Disposition	Identified <u>X</u>
	Received <u>X</u>
	Rejected _____
Reporter <u>918</u>	
Date <u>2-24-97</u>	

Approved by OMB
1060-0440
res 2/28/96

FEDERAL COMMUNICATIONS COMMISSION
FEE PROCESSING FORM

FOR
FCC
USE
ONLY

Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

SECTION I

APPLICANT NAME (Last, first, middle initial)
Chameleon Radio Corporation

MAILING ADDRESS (Line 1) (Maximum 85 characters - refer to Instruction (2) on reverse of form)
10865 ROCKLEY Road

MAILING ADDRESS (Line 2) (if required) (Maximum 85 characters)
HOUSTON

CITY
HOUSTON

STATE OR COUNTRY (if foreign address) | ZIP CODE | CALL SIGN | OTHER FCC IDENTIFIER
TEXAS | 77099 | KIOX-AM |

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
M G R		\$ 115.00	

SECTION II — To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(2) [] [] []	[] [] [] []	\$ [] [] [] []	
(3) [] [] []	[] [] [] []	\$ [] [] [] []	
(4) [] [] []	[] [] [] []	\$ [] [] [] []	
(5) [] [] []	[] [] [] []	\$ [] [] [] []	

ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.

TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING	FOR FCC USE ONLY
\$ 115.00	

Before the Federal Communications Commission

Washington, D.C. 20554

Request To Relocate Transmitter Site of KIOX AM At Bay City, Texas Under Special Temporary Authority

Engineering Statement

KIOX AM (1270 kHz, 1 kw, U, DA-N) currently operates from a licensed site near Bay City, Texas (N 29 - 38 - 10, W 95 - 32 - 22). Due to the loss of its currently licensed site, Chameleon Radio Corporation ("Chameleon") licensee of KIOX (Note: New Call Sign - KFCC applied for as of April 21, 1995), respectfully requests authority to operate from an alternate site utilizing Special Temporary Authorization (STA).

Proposed STA Site

KIOX proposes to utilize a site located 0.28 km (0.175 miles) east, southeast of intersection of Riceville Road and Cravens Road in rural southwest Harris County on a bearing of 100° True from that intersection. The geographic co-ordinates of the proposed site are: N 29 - 38 - 10, W 95 - 32 - 22. The site is outside the corporate limits of any city. (See Exhibit: E - 1)

Proposed Antenna System

KIOX proposes to utilize a 54.86 meter (180 ft.) tower (representing 83.65% in electrical height) supporting a folded unipole antenna system. The folded unipole will be bonded to the support tower at the 50 ohm point. Applicant proposes to utilize a copper wire mesh ground screen around the base of the support tower to a distance of 7.31 meters (24 feet). Bonded to the mesh screen will be 120 radials comprised of #12 soft drawn copper wire extending to a distance of 59.13 meters (194 feet), except radials will be truncated where they intersect property line. No radial shall be shorter than 45.72 meters (150 feet) in length (including mesh). (See Exhibits: E - 2, Page 1, and E - 2, Page 2)

Allocation

As herein proposed, KIOX seeks authority to operate with 1,000 watts non-directional daytime and 250 watts non-directional from the proposed STA site. The proposed STA operation will produce no prohibited overlap with the exception of overlap to KWHI (1280 kHz, 1 kw, ND-D) at Brenham, Texas.

With regard to overlap both produced and received from KWHI, field strength readings on the currently licensed non-directional operation of KIOX are submitted along radials bearing 10, 30, 310, 330, and 350 degrees true. Accurately plotted, the resulting contours show a wide area of overlap between the currently licensed KIOX site and KWHI. Utilizing Figure M-3 to determine contours, there will be .5 mV/m overlap between KIOX and KWHI from the proposed STA site; however, the overlap created from the proposed STA site will reduce overlap to KWHI by more than 35% as compared to the overlap produced by the currently licensed KIOX site. (See Exhibit: E-5, Pages: 1 thru 4)

Readings To Be Taken

Chameleon intends to make the proposed STA site its permanent transmitter location. An application seeking to make the proposed STA site the permanently licensed site is currently being prepared; however, field strength readings from the proposed STA site are necessary to complete that form 301 application; therefore, the application cannot be presented prior to grant of the instant STA request. Once the STA operation is on the air, Chameleon will immediately commence necessary field strength readings along pertinent radials and the formal form 301 request to make the STA site the station's permanent transmitter location.

FAA Authority

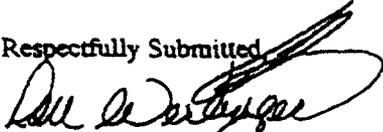
Although the proposed 180 foot tower is below minimums necessary to seek FAA authority to construct, Chameleon has presented an FAA form 7460-1 to the FAA Southwest Regional office in Ft. Worth, Texas on April 20, 1995. FAA approval of the form is expected prior to May 1, 1995. (See Exhibit: E - 6).

If any questions occur regarding the instant request, please contact:

Don Werlinger, President
Chameleon Radio Corporation
10865 Rockley Road
Houston, Texas 77099

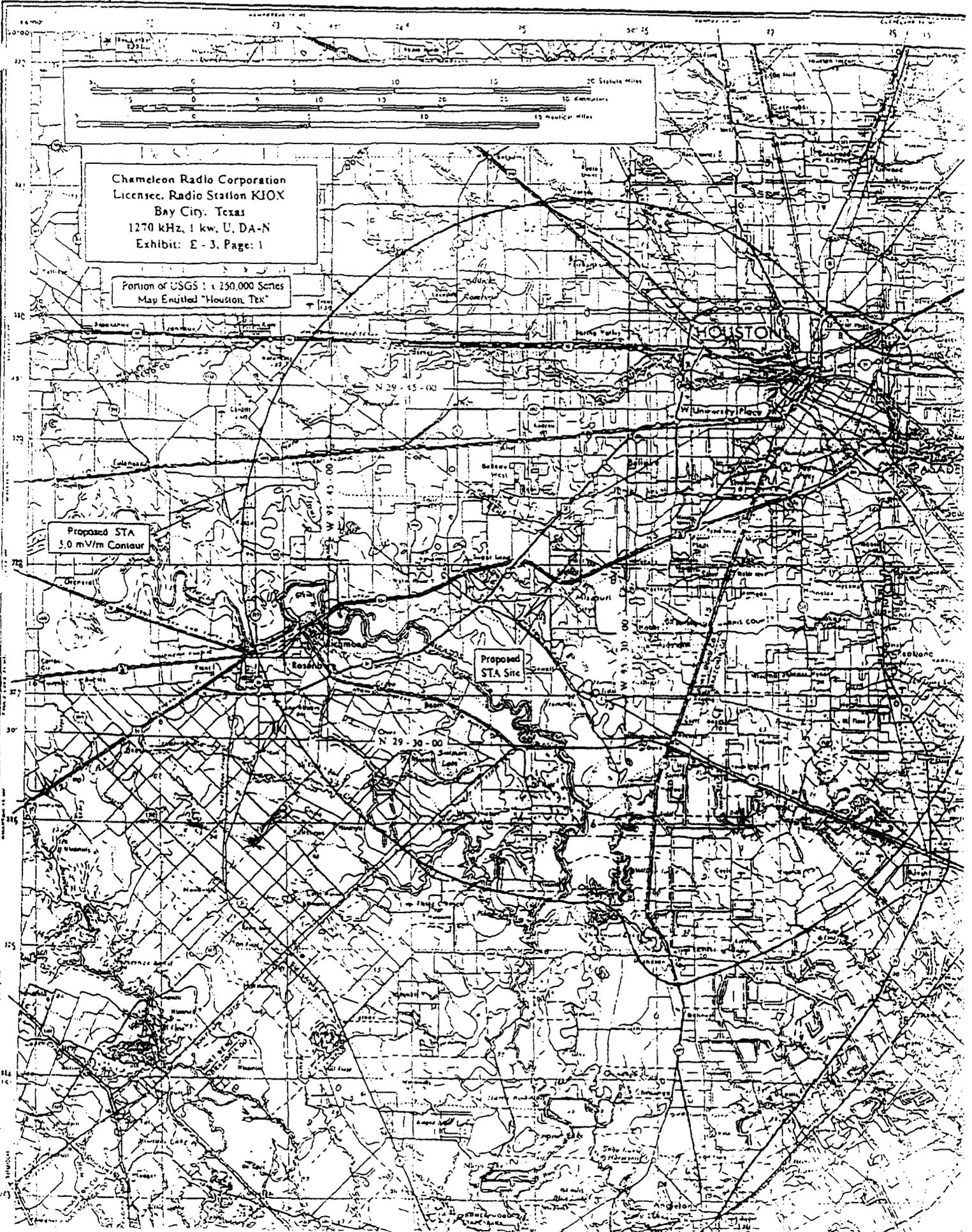
(713) 564 - 1070
(713) 564 - 8653 (Fax)

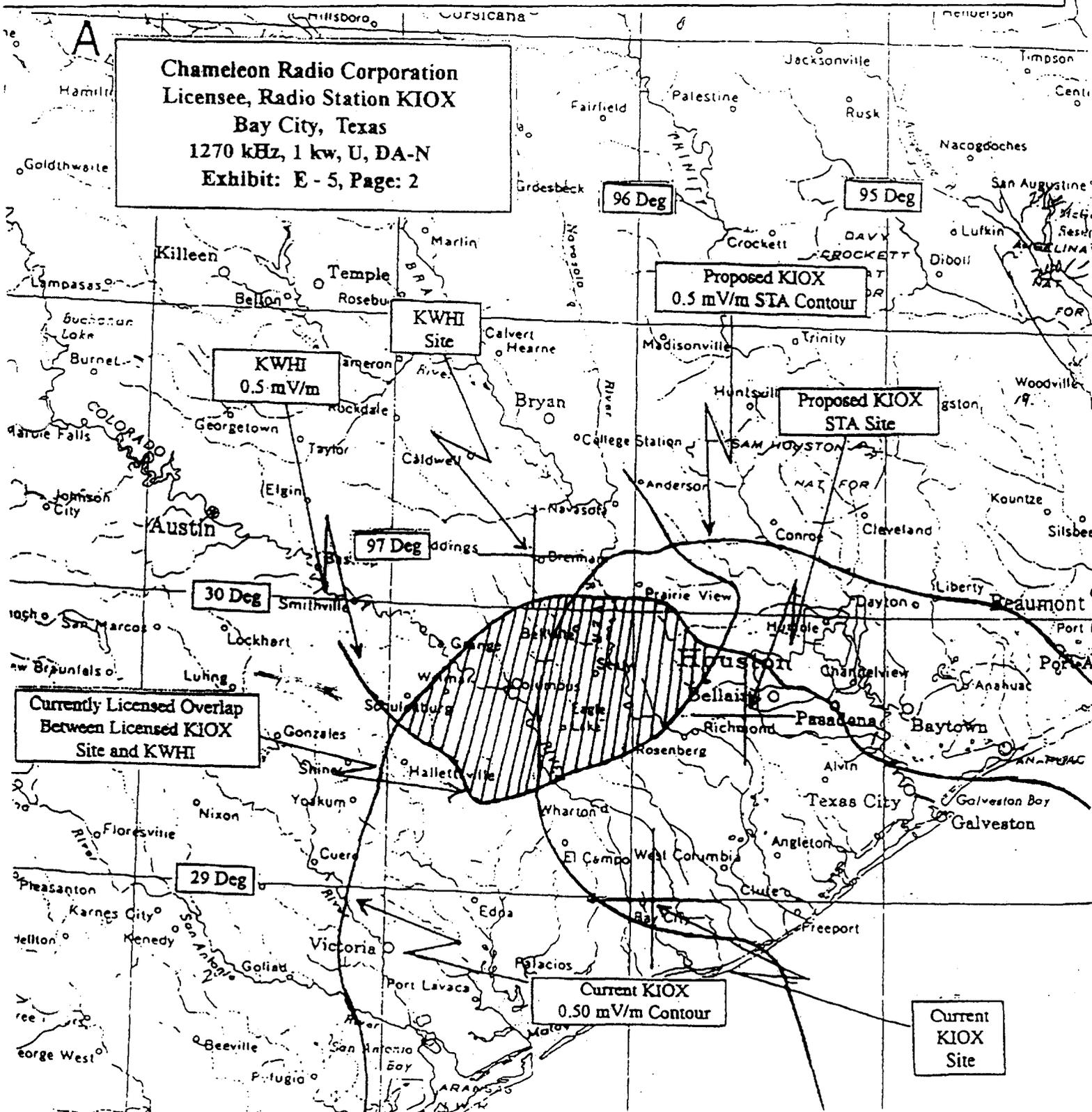
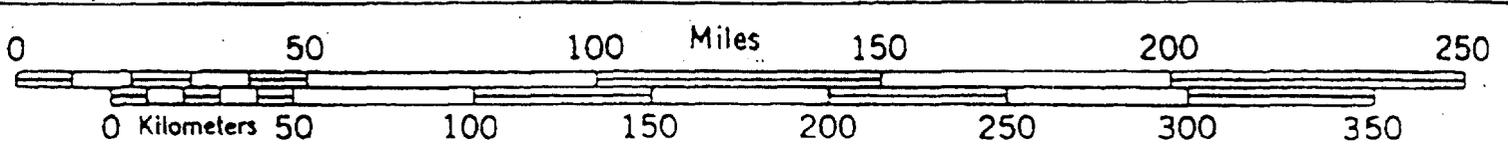
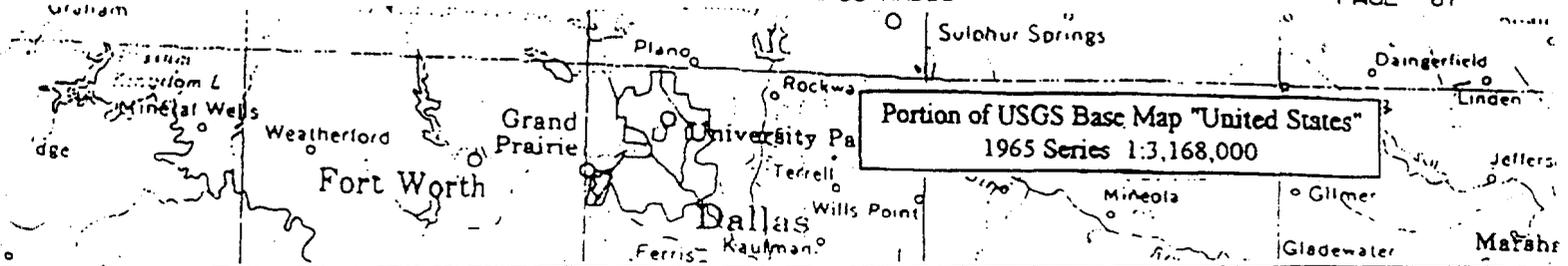
Respectfully Submitted,

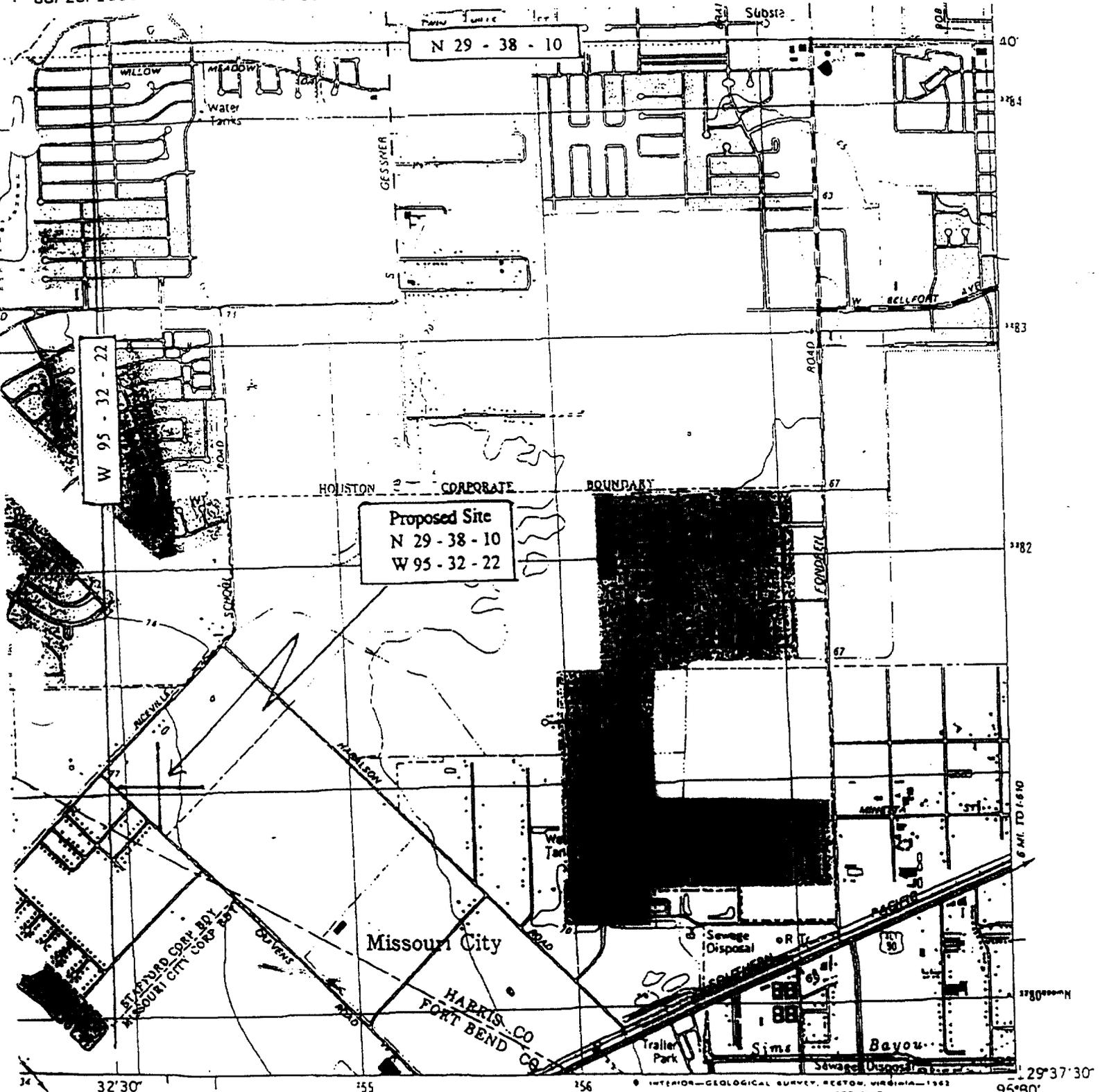


Don Werlinger, President
Chameleon Radio Corporation

WESTERN UNITED STATES 1:250,000



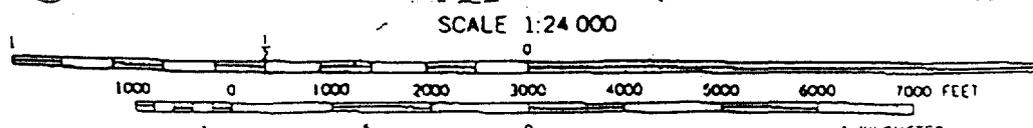




Proposed Site
 N 29 - 38 - 10
 W 95 - 32 - 22

Chameleon Radio Corporation
 Licensee, Radio Station KIOX
 Bay City, Texas
 1270 kHz, 1 kw, U, DA-N
 Exhibit: E - 1, Page: 1

- ROAD CLASSIFICATION**
- Primary highway, hard surface _____
 - Secondary highway, hard surface _____
 - Light-duty road, hard or improved surface _____
 - Unimproved road _____
 - Interstate Route (Shield symbol)
 - U. S. Route (Shield symbol)
 - State Route (Circle symbol)



ALIEF, TEX.
 N2937.5-W9530/7.5

ALMEDA 625 10 SW