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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 99-23
Table of Allotments	)	
FM Broadcast Stations	)	RM-9423
(Tipton, OK)	)	

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JUN 10 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Allocation Branch
Policy and Rules Division
Mass Media Bureau

REPLY TO "ESSENTIAL SUPPLEMENTAL COMMENTS"

I am hereby responding to the defaming assumptions, innuendoes and untruths filed by Dave Garey d/b/a Texas Grace Communications in the above captioned proceeding on May 26, 1999. Garey has taken a wide variety of data and woven them together to form numerous charges against me personally. His desire for a specific antenna preference is the basis for all of the charges. I have truthfully, thoroughly and completely refuted all Garey charges in the attached Declaration. Garey's self-serving purposes are not sufficient to secure an antenna site preference at the expense of defaming me. I have filed no "sham documents", conducted no fraud by using a blind mailbox, or coerced Garey to make concessions he does not want to make.

Respectfully Submitted,

Paul Reynolds

Paul Reynolds, Individually

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DECLARATION

I, Paul H. Reynolds, consulting engineer for WBAP/KSCS Operating, Ltd. and Blue Bonnet Radio, Inc. ("WBAP/Blue Bonnet"), in this proceeding hereby states the following under penalty of perjury:

The Comments of Texas Grace Communications concerning my participation in a "sham" petition through alleged cover-ups, deception and fraud must be answered since they are wrought with false charges, innuendoes, assumptions, accusations, misrepresentations and unmitigated lies. I, individually, and on behalf of my firm, Reynolds Technical Associates, intend to defend our good name and reputation before the Commission and in the broadcast community to the fullest extent allowed by law. In addition to the instant reply, I have retained Alabama counsel to explore civil litigation for defamation of character against Texas Grace Communications, its principal Dave Garey, and through the discovery process, any and all parties who participated in the preparation of the document entitled "Essential Supplemental Comments." However, in the meantime, the Garey document is so vicious and spiteful in nature that it must be answered. First I will defuse each of the erroneous assumptions and then make general comments.

During the course of my reply, one must keep in mind the following: **that Garey launches this vicious personal attack for the sole purpose of obtaining a preferred antenna site, not to avoid the loss of a broadcast facility**. His convoluted reasoning to destroy the character of a professional who has spent 20 (+) years developing a well-respected practice is merely an effort on his part to gain a desired antenna site preference.

Assumption #1. Garey assumes that I represent Good Government Radio ("GGR"), I am synonymous with GGR and that I prepared the Tipton petition for the purpose of blocking his preferred antenna site.

I was originally retained by GGR to do the engineering preparation for a new FM station in Tipton, Oklahoma. During the time I was assisting GGR, I determined that I had a conflict with another client that caused me to terminate my involvement in this proposed rule making proceeding. When I discovered the conflict, I advised Ms. Nelson of GGR that a conflict had arisen. We discussed the various options available to her. She chose to use the previous engineering work that I had prepared and file on her own with the knowledge that I could no longer represent her Tipton filing before the Commission.

Ms. Nelson chose to file for channel 249C2 at Tipton since I informed her that I had prepared a scenario that would conflict with the other available allotment of channel 275C2. We discussed that if she filed for channel 275C2 she would get embroiled in a complicated proceeding, and one that she would likely lose on a comparative basis. She decided to use a non-conflicting channel (249C2), even though two channel substitutions, one of which was an unoccupied channel, was needed.

I have no vested interest in GGR, and I never intended to be a part of a Tipton application (Form 301). Ms. Nelson of GGR made the decisions with respect to the Tipton petition on her own.

I was aware of the Texas Grace allotment of channel 248C2 at Archer City due to the fact that I had a client which submitted a counterproposal in that proceeding (MM Docket 97-225). However, rather than hinder the Garey proposed allotment of channel 248C2 at

Archer City, I offered a substitute channel at the point of conflict. The substitute channel gave my client its objective and also provided Garey with the community of license change he sought.

If I had any interest in blocking Garey (Texas Grace), or interfering with his development of KRZB(FM) at Archer City, I would have done so during the proceeding. Therefore, it is obvious that Gary's assumptions that the proposed GGR allotment of channel 249C2 at Tipton is a concealed, clandestine and illegal attempt to deliberately block his preferred antenna site for KRZB are misguided, and that his methods to eliminate the Tipton channel are vindictive.

I assumed that the site Garey chose for the Archer City allotment was his preferred site since he was free to chose any site that was fully spaced and provided 70 dBu coverage to Archer City. When I did the channel studies for channel 249C2 at Tipton, it was impossible for me to know that he would later chose a site so far away from his city of license, when he could have done so in MM Docket 97-225 and receive full protection for that site. The Tipton petition for rule making was filed three months prior to the Garey application and was filed at the closest fully spaced point to Tipton. The Tipton petition in no way injured Garey's allotment of channel 248C2 to Archer City at reference coordinates he himself chose.

<u>Assumption #2</u>. A Gonzalez, Florida, post office box was opened under false pretense and proves that I hid my involvement in obtaining this post box.

Once again Garey has taken a wide variety of data and woven them into accusations that are misguided, or are an outright misrepresentation of facts that have been twisted to suit his point.

In the course of assisting GGR, Elinor Nelson asked me to open a mailbox at Gonzalez, where she intended to establish her business home base. I did so at her request. When I filled out the form, I asked the post office attendant on duty at the time what was the meaning of the statement, "will this box be used for soliciting or doing business with the public?" He was unclear as to the exact meaning, but thought that it concerned doing mass mailings and requesting public response to those mailings. Since I did not think that GGR would be using the box to this end, I checked the "no" block.

In no way was I aware of postal regulations that applications with the box checked "no" prohibited the Postal Department from disclosing who signed the application.

In his self-serving conclusion concerning the post office box at Gonzalez, Florida, Garey again weaves a total deception by taking bits and pieces of information and making them sound like fraudulent action on my part. The actual story is simple, though not as intriguing as Garey's.

However, the extent to which Garey will make assumptions and venomous misrepresentations is demonstrated on page 11, (full) paragraph 2. In a discussion concerning a letter to him from postal inspector, W. G. Cunningham, Garey quotes Cunningham as follows, "Cunningham goes on to explain that Reynolds' concealment of his identity as GGR box holder, was specifically accomplished by Reynolds' false assertion to the Postal Service regarding his usage of the box." This Garey statement is libelous, slanderous and a lie. Nowhere in the letter does Cunningham make the editorial

statement that I concealed the identity as the GGR box holder by making a false assertion to the Postal Service. In fact, no statement in the Cunninghan letter can even have this statement "read in to it." This is self-serving editorial comment at its utmost as Garey abuses the letter of the Postal Inspector with insinuations that the post office department considers my box, and the way it was opened to be fraudulent. I had no way of knowing that the effect of my response was to deny others the names of the persons assigned to the box.

Due to the Garey inclusion of the Cunningham letter, I contacted the Post Master at Gonzalez to ask questions concerning the original application for the box, and asked her to please take all steps necessary to make the proper corrections. She stated that the omission was of no major concern, and the application statement was confusing and very seldom came into play. She stated that it was a minor error, and that she had changed the response during our phone conversation. If the Gonzalez post office box was the major clandestine and fraudulent act that Garey says it was, why was it so easy to correct, and how can such a major misdeed be corrected with a three-minute phone call?

Therefore, all of the Garey scurrilous attacks on me concerning the opening of the Gonzalez, Florida, post office box are like all of the other libelous statements, without merit and self serving.

The convoluted and self-serving comments of Garey demonstrate how far this person is willing to go to in an attempt to destroy the good name and reputation of someone he considers to be his opponent. And, as stated before, all of this is for an antenna site preference.

Assumption #3 Garey states that his plans to serve a "vital 2-county area were severely impeded" by the allotment of channel 249C2 at Tipton, OK. He further asserts that when the petition for rule making was filed by GGR, channel 275C2 was available for allotment. Garey is not aware that even though the WBAP/Blue Bonnet Counterproposal was filed on December 21, 1998, the basic design, which included channel 276A at Vernon, had been completed and submitted to the clients prior to November 1, 1998. Channel 276A at Vernon conflicts with the Garey proposed substitution of channel 275C2 at Tipton. Since this office prepared the WBAP/Blue Bonnet Counterproposal, I was fully aware of the proposed use of channel 276A at Vernon. In fact, channel 276A at Vernon was entered into our "in house data base" during the month of October. Therefore, I knew channel 275C2 was not available for allotment at Tipton without conflict. Other options for Vernon were considered, but all required a site change or conversion of the Vernon station to §73.215 spacing, only channel 276A did not require a site or spacing method change.

Garey questions the motive behind the Reply Comments of WBAP/Blue Bonnet filed by Mark Lipp and me. He states that we had a hidden agenda by asking that the KRZB application not be considered as a counterproposal to the Tipton PRM. The principals of WBAP/Blue Bonnet are concerned with the KRZB - Tipton conflict only to the point it could have an impact on its proposed upgrade of KEMM. The KEMM PRM had not been issued for the 15 day comment period when the Tipton WBAP/Blue Bonnet Reply was prepared. Had I not pointed out the KRZB application's technical flaws, I would have been derelict in my duty for our client in the KEMM proceeding. This is another one of the misguided and convoluted assumptions Garey makes concerning my actions

and motives. However, in his self-serving discourse, he goes beyond that to the point of being libelous repeatedly.

As for Mark Lipp, he had no involvement in the preparation of the Tipton petition. I did not speak to him about the Tipton filing, and as far as I know, Ms. Nelson has not spoken to him either. I have my own clients and Mr. Lipp has his. Our only discussion of client matters occurs when we have clients in common.

Comments

To my recollection, I have spoken with Dave Garey by phone four times. The first time was during 1996 when a client had sought his participation in a rule making process. Garey contacted me in an effort to secure my engineering services! I avoided any commitment or comment. Shortly thereafter he called again, and I again steered the conversation away from the instant proceedings since I knew I had a conflict of interest. The third phone conversation occurred immediately prior to the NAB convention of this year. He began by saying he had uncovered "my scheme" and that he knew I had opened the mailbox at Gonzalez. During the course of the conversation, he asked me exactly what KLAK wanted him to do. I responded that, if KLAK proceeded with its upgrade scenario, it wanted to substitute another class C2 channel for channel 248C2 at Archer City at the preferred application site. I was very specific that the substitution did not require a site change from his allotment coordinates, his preferred application coordinates or his proposed upgrade reference coordinates (class C1). Garey made a suggestion that I do a complete engineering study in writing, and submit it to his attorney for consideration. I agreed, but stated that it would have to be after the NAB convention since I had previous commitments.

On Monday after the convention, I called Garey from an airport pay telephone booth.. I told him that KLAK would welcome the opportunity to talk to him, and I reiterated that all proposed changes would in no way interfere with his proposed operation.

After several minutes of trying to reason with him, he became extremely volatile and ended with a litany of accusations by stating, "..you have given me no choice, I will destroy you" at which time he hung up the phone. Based on the conversation content at the time, I interpreted this statement to be plural and mean both myself and Mark Lipp. In my point of view, there was no reason to prepare a written technical report to his attorney since he had made his position clear, **he was intent on destroying us.**

Garey states that he was complying with the Commission's order in tendering KRZB's Form 301 application. Garey is given no preference for an antenna site, and the allotment of channel 249C2 at Tipton does not eliminate KRZB from having numerous antenna sites in the immediate area of Archer City and to the north. Attached to this Declaration are two allocations maps which depict the fully spaced window for channel 248C2 at Archer City. The window includes the proposed allotment of channel 249C2 at Tipton. Exhibit **A** is a map using the Reynolds Technical Associates normal procedure that plots all stations of concern and their respective separation contours. The shaded area is a location window where KRZB can be fully spaced. Exhibit **B** is a zoomed map of the clear spaced window area. The allotment of channel 249C2 at Tipton does not prohibit Garey from finding fully spaced site for KRZB's C2 operation at Archer City.

Garey refers to the "box in" process of one FM radio station operator using a drop-in channel to prevent another operator from achieving its goals. Earlier on this page he states that the Tipton allotment clears the KRZB allotment reference by, "a trace .05

kilometer" and that this prohibits a site north of the reference. Garey is incorrect, §73.215 was created specifically to accommodate situations where short spaced sites are desired. Under §73.215, KRZB can have an antenna site 38 kilometers north and still allow for the allotment of channel 249C2 at Tipton.

The Commission has a practice of placing allotment reference coordinates as close to the proposed community of license as possible. This practice is known to me and used when the allotment reference coordinates at Tipton were chosen. If GGR had specified other reference coordinates, the Commission would have modified then to the closest non-short spaced site to Tipton. It does not mean that GGR chose an allotment reference at Tipton that was a deliberate attempt to box-in KRZB. Quite the contrary is true, KRZB can use antenna sites up to 13.1o kilometers (8.14 miles) north of its allotment reference coordinates by locating at 55.50° instead at the proposed KRZB antenna site. See Exhibits **A** and **B**.

Based on the tenor of the Garey document, "Essential Supplemental Comments" he is in the process of fulfilling his earlier threat to me that he would "destroy me." In order to preserve an antenna site preference, on an existing structure, he has been willing to launch a vicious, unsubstantiated attack on Mark Lipp and me with accusations and innuendoes that have resulted in a clear defamation of character concern. Therefore, I respectfully request that the Commission consider the Garey "Essential Supplemental Comments" for what they are, a scurrilous personal on the part of a permittee who wants an antenna site preference.

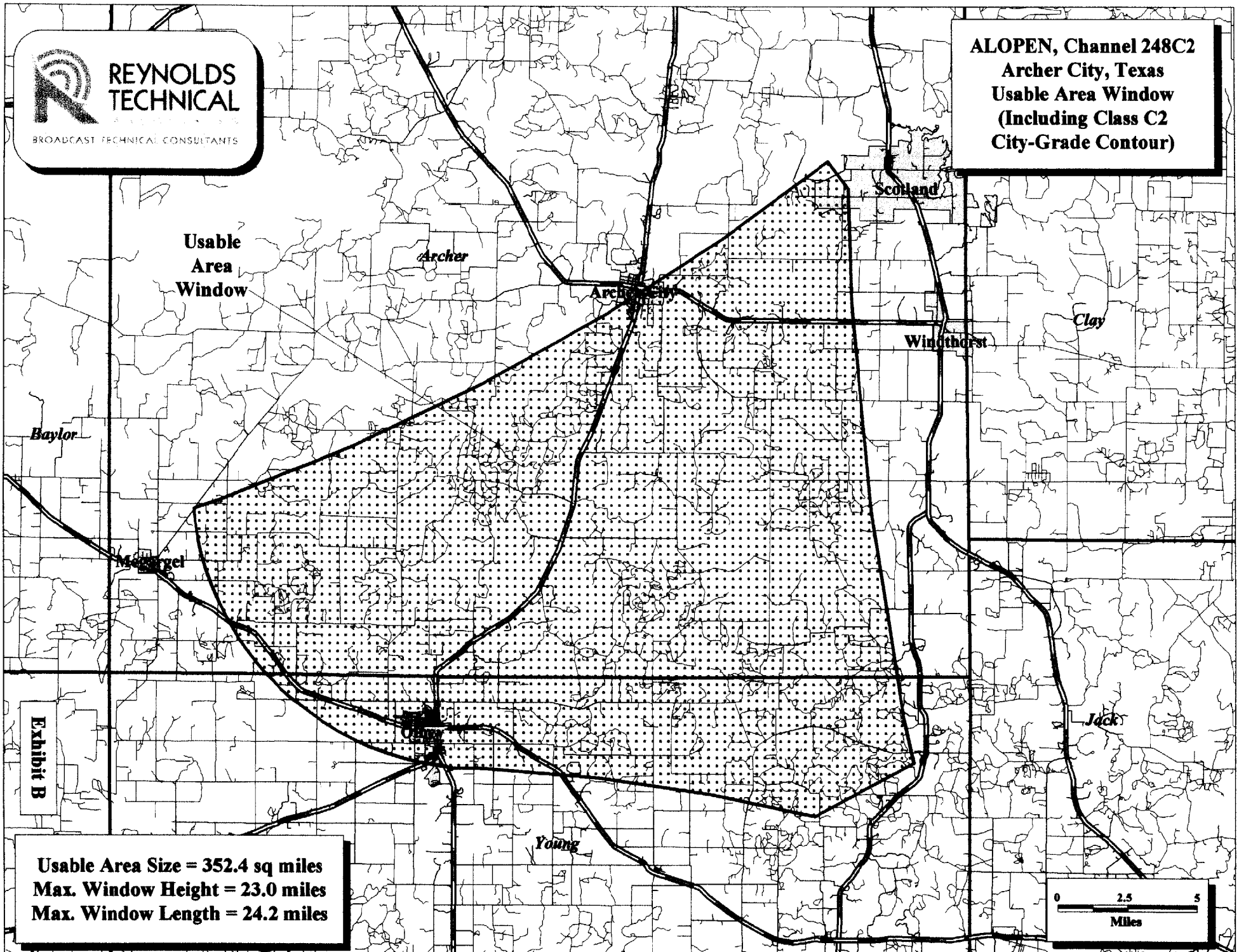
CERTIFICATION

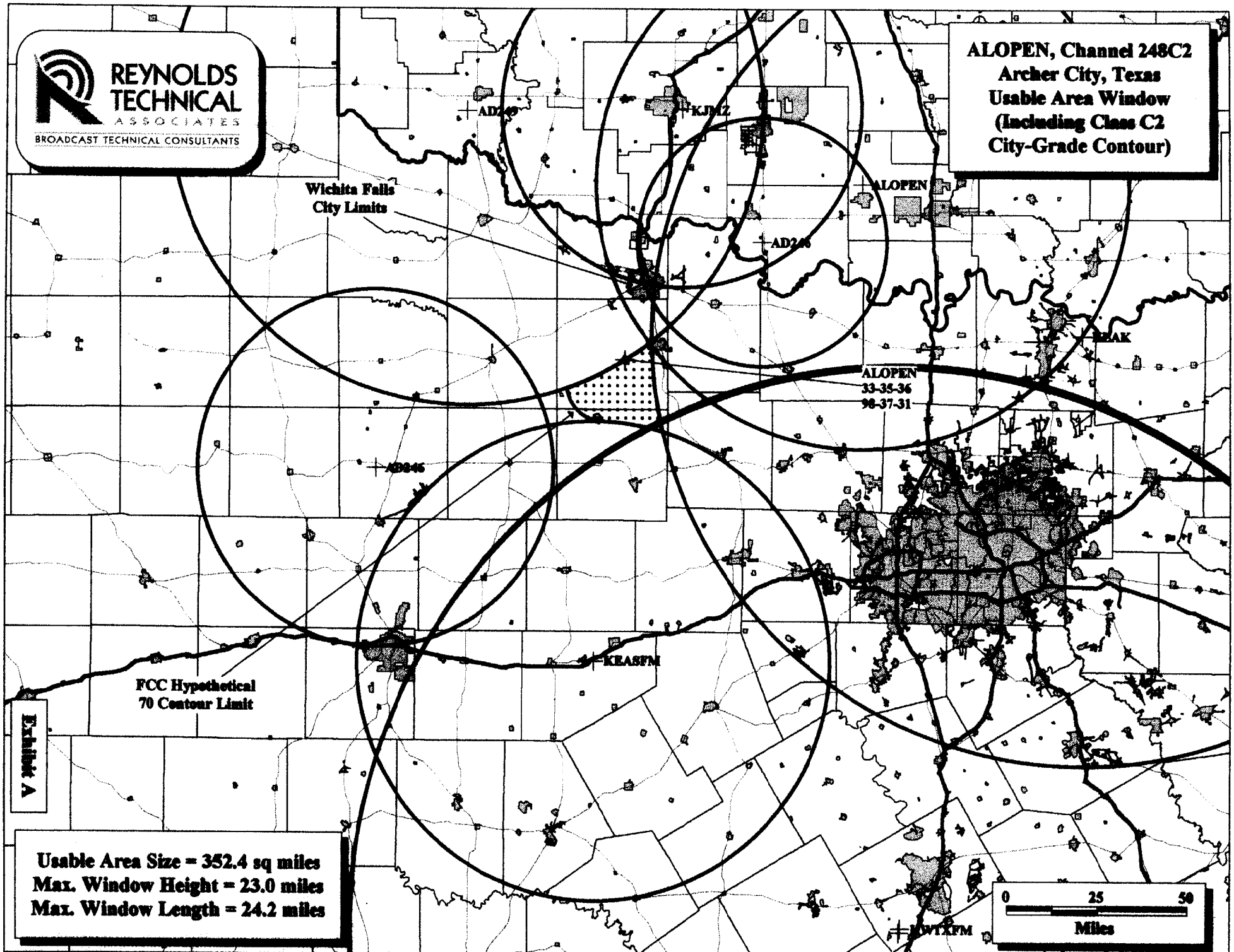
I hereby affirm that the statements contained in the Declaration are True, Complete and Correct to the best of my knowledge and belief and are made in good faith.

Paul Reynolds, Individually
415 North College Street
Greenville, AL 36037

Sworn to and subscribed before, this 8TH day of June, 1999.

Ronald Scruggs, My commission expires 7/2001


REYNOLDS TECHNICAL
BROADCAST TECHNICAL CONSULTANTS
ALOPEN, Channel 248C2
Archer City, Texas
Usable Area Window
(Including Class C2
City-Grade Contour)
Usable
Area
Window
Archer
Scotland
Clay
Windthorst
Baylor
Jack
Young
Exhibit B
Usable Area Size = 352.4 sq miles
Max. Window Height = 23.0 miles
Max. Window Length = 24.2 miles
0
2.5
5
Miles


REYNOLDS TECHNICAL ASSOCIATES
BROADCAST TECHNICAL CONSULTANTS
ALOPEN, Channel 248C2
Archer City, Texas
Usable Area Window
(Including Class C2
City-Grade Contour)
Wichita Falls
City Limits
AD249
KJMZ
ALOPEN
AD248
ALOPEN
33-35-36
98-37-31
AD246
KEASFM
FCC Hypothetical
70 Contour Limit
Exhibit A
Usable Area Size = 352.4 sq miles
Max. Window Height = 23.0 miles
Max. Window Length = 24.2 miles
0
25
50
Miles

CERTIFICATE OF SERVICE

I, Paul Reynolds, Individually, do hereby certify that I have on this 10th day of June, 1999 caused to be mailed by first class mail, postage prepaid, copies of the "Opposition to essential supplemental comments of Texas Grace Communications" to the following:

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