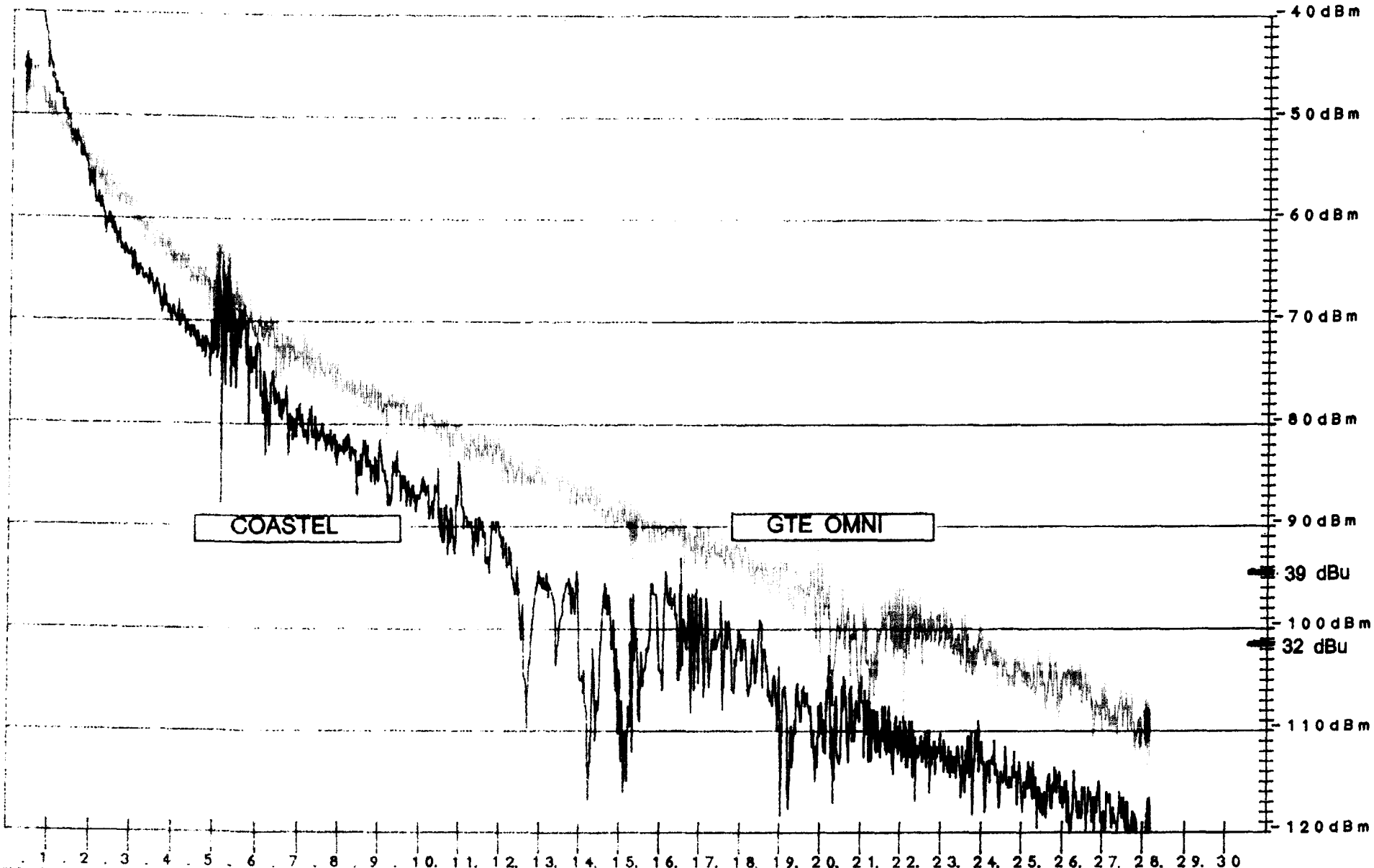
GTE VS Coastel Gulf Signal 144 deg. Radial

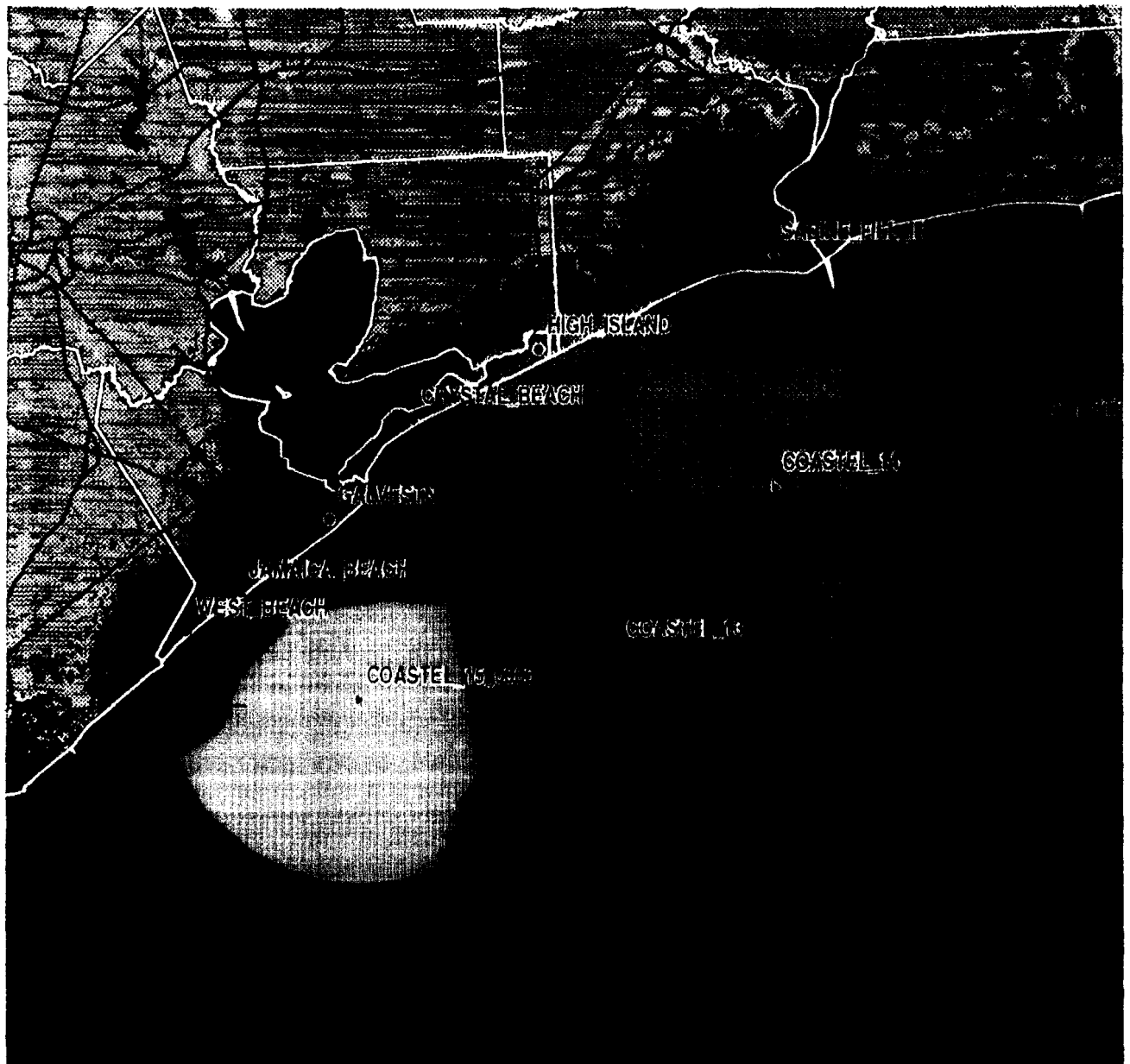



KEY:
BLACK: COASTEL CH 338
RED: GTE CH 352

FIGURE #4

EXHIBIT I

GRANET Ver 1.5.2c




Wed Jul 19 09:03:49 1995
User ID: engr

UTM zone 14
Map # 61

**Sector/Site**

- 0 COASTEL_14
- 0 COASTEL_13
- 0 COASTEL_12
- 0 SABINE_FILL_IN
- 0 CRYSTAL_BEACH
- 0 HIGH_ISLAND
- 0 GALVESTN
- 0 WEST_BEACH
- 0 JAMAICA_BEACH
- 0 COASTEL_15_0000

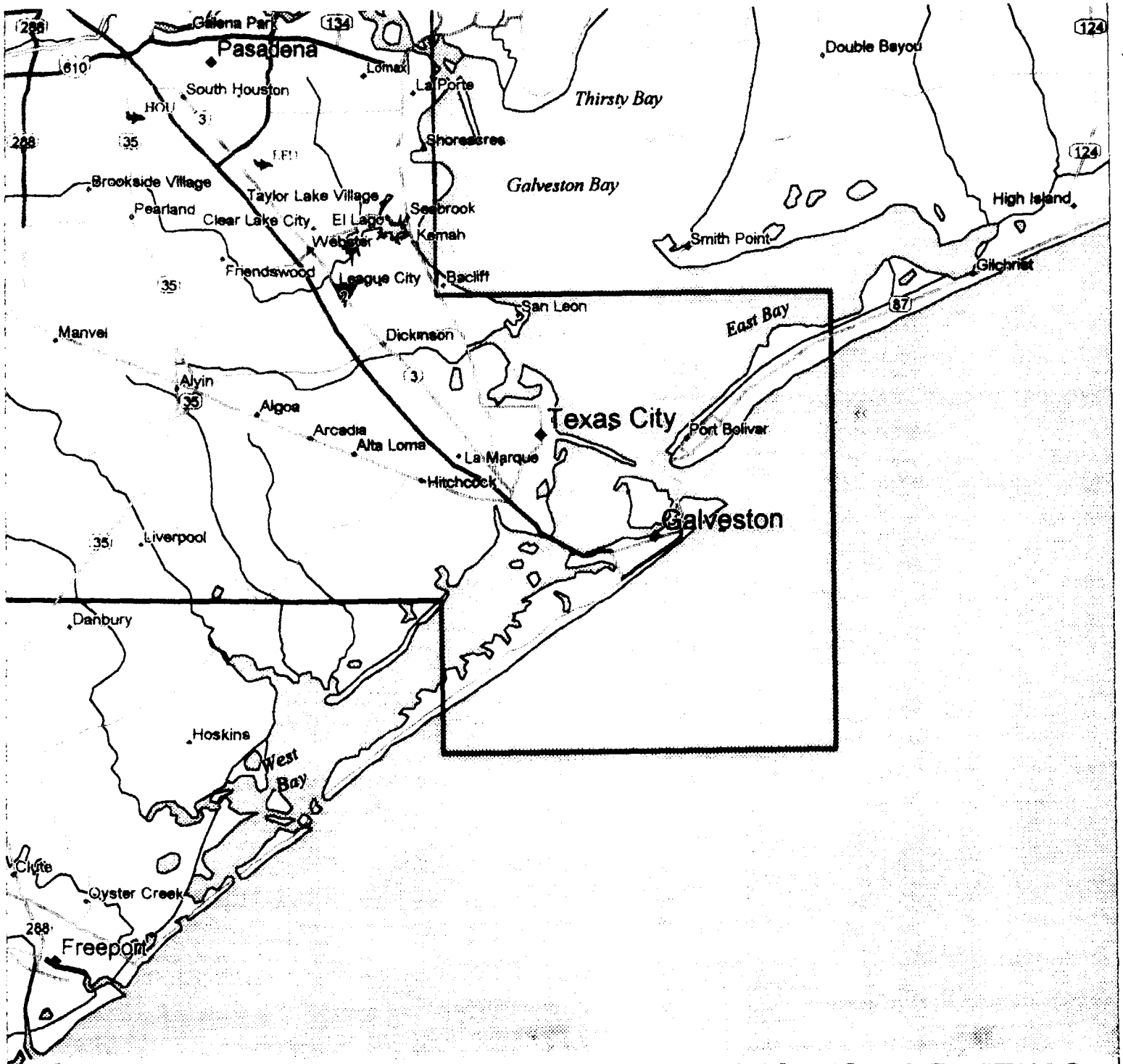
# EXHIBIT II

Scale 1:1200000

miles 0 10 20

km 0 20 40

GTE Mobilnet
100 Glenborough
Houston, TX 77067




COAST HIGHWAY FROM FREEPORT TO HIGH ISLAND, TEXAS

EXHIBIT III

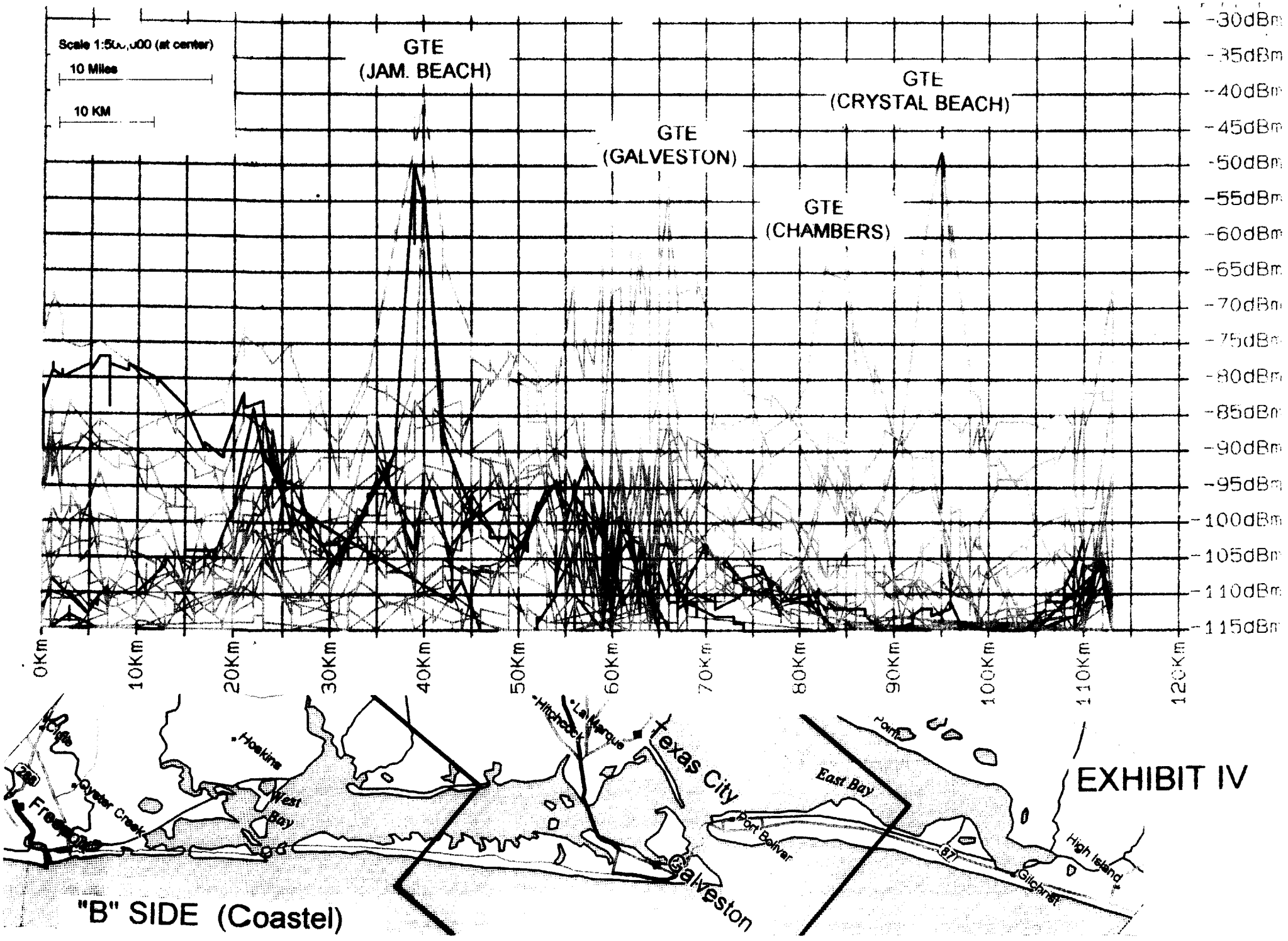
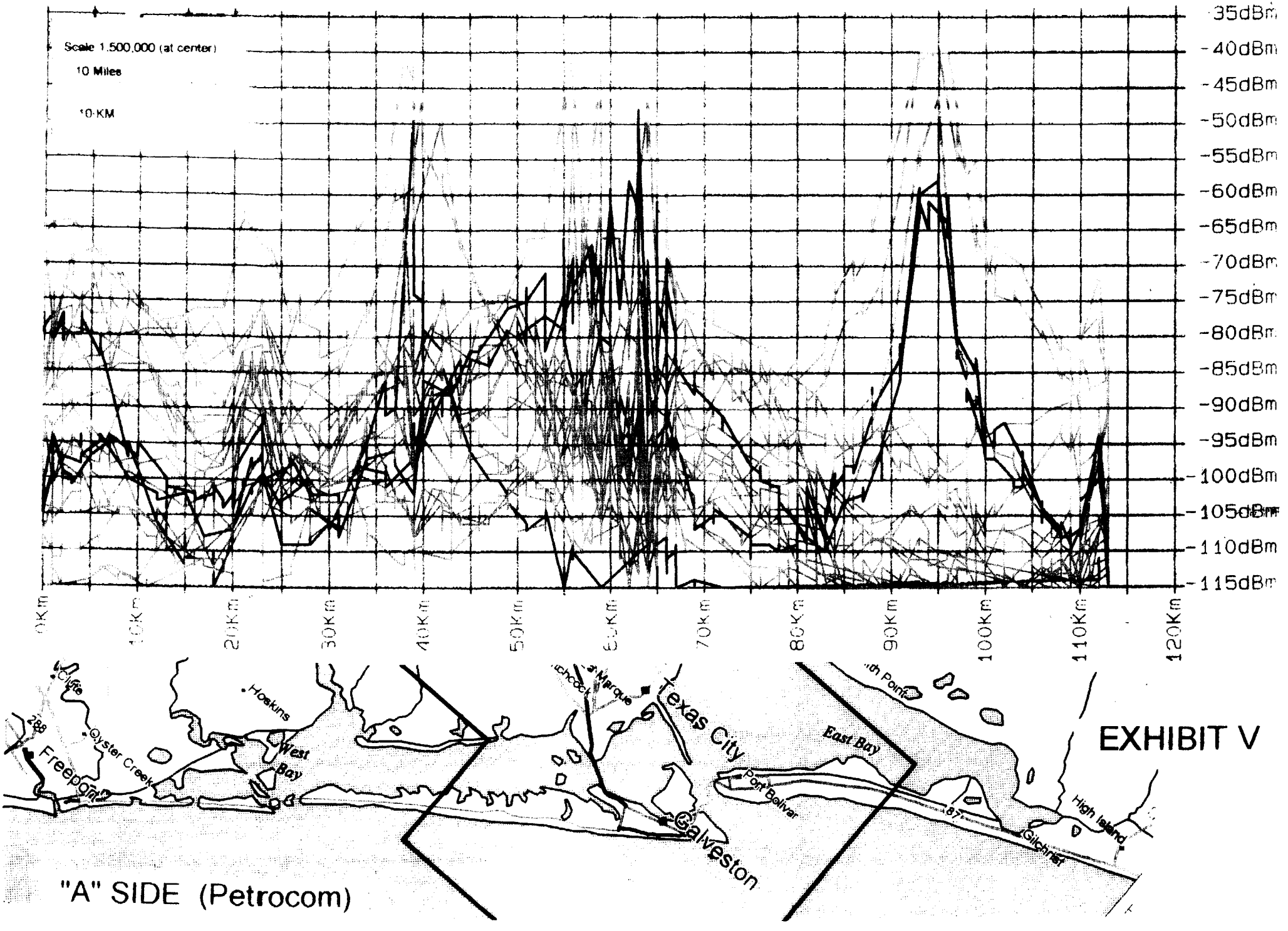

Scale 1:500,000 (at center)
10 Miles
10 KM
GTE (JAM. BEACH)
GTE (GALVESTON)
GTE (CHAMBERS)
GTE (CRYSTAL BEACH)
-30dBm
-35dBm
-40dBm
-45dBm
-50dBm
-55dBm
-60dBm
-65dBm
-70dBm
-75dBm
-80dBm
-85dBm
-90dBm
-95dBm
-100dBm
-105dBm
-110dBm
-115dBm
0Km
10Km
20Km
30Km
40Km
50Km
60Km
70Km
80Km
90Km
100Km
110Km
120Km
Hoskins
West Bay
Oyster Creek
Freeport
Hitchcock
La Marque
Texas City
Galveston
East Bay
Port Bolivar
High Island
Gilchrist
"B" SIDE (Coastel)

EXHIBIT IV


Scale 1:500,000 (at center)
10 Miles
10 KM
-35dBm
-40dBm
-45dBm
-50dBm
-55dBm
-60dBm
-65dBm
-70dBm
-75dBm
-80dBm
-85dBm
-90dBm
-95dBm
-100dBm
-105dBm
-110dBm
-115dBm
10Km
20Km
30Km
40Km
50Km
70Km
80Km
90Km
100Km
110Km
120Km
Freeport
Oyster Creek
Hoskins
West Bay
Texas City
Galveston
East Bay
Port Bolivar
Gilchrist
High Island
EXHIBIT V
"A" SIDE (Petrocom)

4

## Attachment 4: A 10-mile "neutral" zone? Why 10 miles? Why any "neutral" zone at all?

Land carriers complain that, under existing rules, calculated service area boundary (SAB) contours show beach coverage, but that actual signal strength is too weak to serve handheld phones. The land carriers reject engineering solutions. Instead, led by Verizon Wireless and Alltel Corporation, they propose a 10-mile "neutral" zone in which neither land nor Gulf carriers would have interference protection. A straightforward engineering analysis exposes the "neutral" zone as "overkill" that covers land carriers' true intentions. Assume a land transmitter, with a 200 foot tower-mounted antenna, is engineered so that the SAB contour stays just within the coastline boundary separating the land market from the Gulf of Mexico Service Area (GMSA), but that actual signal strength is too weak to serve beach customers. As a solution, the effective radiated power (ERP) of the transmitter is *doubled.* The table below shows the resulting extension into the GMSA.

| Initial ERP | Initial SAB contour distance | Doubled ERP | New SAB contour distance | GMSA extension (difference between initial and new distance) |
|---|---|---|---|---|
| 25 watts | 11.0 miles | 50 watts | 12.4 miles | 1.4 miles |
| 100 watts | 13.9 miles | 200 watts | 15.7 miles | 1.8 miles |

With an ERP doubled to help serve beach traffic, the extension into the GMSA is less than 2 miles. So why are *10-miles* needed? The above table exposes the "neutral" zone for what it really is – a grab by the land carriers that takes service area from the Gulf carriers without compensation. How will this takings be accomplished? Contrary to appearances, the land carriers mostly will not rely on existing transmitters for beach coverage. Instead, with a "neutral" zone, they will install transmitters as close to the shoreline as possible, overpowering Gulf carriers' transmissions, effectively taking the coastal zone for themselves – without compensating anyone. GTE (now Verizon), in its August, 1997 comments sums it up: "Using water propagation models, GTE believes that land-based transmitters can be configured to reliably cover a territory up to fifty miles from shoreline." A 10-mile "neutral" zone would give Verizon the green light to implement this plan.

Signal strength can be weak at *any* boundary that separates adjacent markets – whether in Minnesota or the Gulf of Mexico. That is why the current rules provide that a carrier cannot cross the boundary without consent. These rules have provided the incentive for carriers to enter into extension agreements for over the past 10 years. Why should the Gulf be different? Indeed, A-side carriers in the Gulf have reached such agreements. As for a "neutral" zone, the question therefore is not so much why 10-miles but why have any such zone at all?

*Regardless of its size*, a "neutral" zone for already licensed spectrum is an *unprecedented* invitation for trouble. If land carriers can provide a stronger signal in the "neutral" zone without consent from Gulf carriers, interference issues will abound. Example: land carriers use a land formula for SAB contours going into the "neutral" zone; Gulf carriers complain that a water formula and actual data show land-based signals crossing the zone and capturing their traffic. Litigation ensues. Moreover, the "neutral" zone will create a shifting best server line as land and Gulf carriers re-engineer and add sites in response to each other's efforts to increase signal strength in the 10-mile zone. Customers will suffer as one day they are treated as home subscribers, the next day as roamers, and so on. *The "neutral" zone is a recipe for chaos. It resolves nothing and creates new problems.*

Verizon originally proposed extending boundaries 25-50 miles seaward. Later, realizing that high power transmitters would capture traffic even in a zone where no carrier had protection, it proposed a scaled-back 12-mile "neutral" zone. It now proposes a further scale back to 10-miles. Why? Because an only-over-the-water "neutral" zone, however large, gives Verizon something it did not have before, without costing it a dime. That's far easier than abiding by current rules that require give-and-take compromise. The "neutral zone" is Verizon's attempt to achieve through rule making what it did not achieve in the enforcement proceeding concerning its Mobile, Alabama sites. It is taking other land carriers along for the ride, hoping to get something for nothing.

***A "neutral" zone will accomplish little more than to drag the FCC into takings litigation and create precedent for others to argue for similar "neutral" zones between land-based markets.***

*Ex Parte* Presentation
January 8, 2001

BACHOW/COASTEL, L.L.C. RESPONSE TO THE LAND CARRIERS' JOINT PROPOSAL

Cellular Service in the
Gulf of Mexico Rulemaking
WT Docket No. 97-112
CC Docket No. 90-6

A coalition of land-based carriers (the "land carriers") submitted a Joint Proposal to the Commission in an *ex parte* meeting on December 7, 2000. The land carriers' objective in submitting this Joint Proposal is effectively to steal a ten-mile wide band of license area from Bachow/Coastel, L.L.C. ("Bachow/Coastel") and Petroleum Communications, Inc. ("PetroCom") (collectively, the "Gulf Carriers") to allegedly "solve" land-based service "problems" that the land carriers created themselves. The land carriers created these "problems," such as the land carriers' steadfast refusal to re-engineer their cellular system in the Mobile, AL Metropolitan Statistical Area, to serve land-based customers, in a flimsy attempt to provide justification for their receipt, free of charge, of the aforementioned ten-mile band of license territory to be stolen from the Gulf Carriers. In that effort, the Joint Proposal is the latest absurd attempt by the land carriers to steal license territory from the Gulf Carriers.

The Joint Proposal has no place in the instant rulemaking proceeding. If the land carriers cared to check the Commission's objectives in this proceeding, they would have known that the Commission commenced this proceeding to solve coverage problems in the waters of the Gulf of Mexico, not the land areas surrounding the Gulf of Mexico (*see* the *Second Further Notice of Proposed Rulemaking* in this proceeding). Over the past three years, the Gulf Carriers have expanded their coverage effectively to eliminate gaps in service in the coastal waters of the Gulf of Mexico; thus, the principal reason for this proceeding is moot. If the Commission cares to commence a rulemaking proceeding addressing the land carriers' inability to serve their own license areas, then it should do so, and the land carriers' Joint Proposal should be considered within such a proceeding.

<u>The Joint Proposal</u>

- The Joint Proposal seeks creation of a "Neutral Zone" that extends from the Gulf shoreline to ten miles from the shoreline. This proposal further demonstrates the lack of integrity in the land carriers' position in this proceeding. Originally, some land carriers proposed a 50-mile extension into the Gulf; other land carriers argued that only a five-mile extension was necessary. Then, it became a 12-mile extension. Now, it is a 10-mile extension. The only consistency in the land carriers' position concerning the neutral zone is that they lack any data to support the notion of a Neutral Zone. Rather, the changes in the size of the neutral zone reflect the changing beliefs of the land carriers about how much territory they can steal from the Gulf Carriers through this rulemaking proceeding. At the outset of this proceeding, optimism apparently ran high among the land carriers,

and they sought up to a 50-mile zone. Then, after the Commission proposed 12 miles, the land carriers adopted that figure because stealing a 12-mile band of territory would be better than having *no* extra license territory given to them for free. Perhaps understanding that their proposals are now far removed from the objectives of this proceeding, and that they have still failed to produce any real world data justifying a Neutral Zone for the past three years of this proceeding, the land carriers have now arbitrarily reduced the Neutral Zone to ten miles. At this rate, the concept of the Neutral Zone should disappear in five more years (given a two-mile reduction per year).

- The Joint Proposal also creates an Exclusive Zone for the Gulf Carriers, which is simply the area of the Gulf waters that the land carriers cannot cover with the strongest signals emitted from their antennae. There is no public interest factor in the creation of the Exclusive Zone, and to their credit, the land carriers do not even try to fictionalize one.

- There is nothing "neutral" about a 10-mile wide swath of territory taken from a licensee to be "shared" with other licensees. If the Neutral Zone was truly "neutral," it would cover five miles of water from the shore, and five miles of land from the shore. Use of the term "neutral" to describe the land carriers' theft of license territory from the Gulf Carriers is nothing more than the land carriers' exploitation of a misnomer.

- The lack of protection from subscriber capture wholly undermines the very purpose of sections 22.911 and 22.912 of the Commission's rules.

- The land carriers' Joint Proposal is unworkable. Frequency coordination in their proposed Neutral Zone is impossible given the itinerant nature of Gulf-based cellular operations. Although the land carriers failed to recognize this operational characteristic in the Gulf, the United States Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit") did in holding that any cellular rules adopted by the Commission for the Gulf of Mexico must account for the unique nature of Gulf service.

- Using the land-based propagation for a water-based license is nonsensical, especially in light of Commission precedent and technical findings supporting the use of a water-based propagation model for the Gulf. Indeed, the land carriers offer no justification for using the land-based propagation model for the Gulf waters.

- There is simply no need to adopt the land carriers' Joint Proposal. The Joint Proposal allows carriers to place their 32 dbu contours at the border of the other carriers' license boundary. Interestingly, the current rules *already* permit carriers to place their contours at other carriers' license boundaries.

- The land carriers' Joint Proposal does not allow the Gulf Carriers to migrate service and facilities from platform to platform because of the Joint Proposal's requirement of frequency coordination *within* the Neutral Zone; their proposal is classic "move it and lose it." Assume *arguendo* that the unique nature of providing cellular service in the Gulf (as recognized by the D.C. Circuit) dictates that a Gulf Carrier relocate its facilities within the

Neutral Zone from Site A to Site B. Then, a land carrier subsequently commences operations at Site A. The land carrier would then preclude the Gulf Carrier from ever returning to Site A, even though the unique nature of cellular service provision in the Gulf would dictate such a move, because the Gulf Carrier could not obtain frequency coordination at Site A due to the presence of the land carrier.

- Thus, the Joint Proposal freezes out the Gulf Carriers from serving increasingly large areas of the so-called Neutral Zone because the land carriers' antennae do not move, and the Gulf Carriers' antennae do move. The D.C. Circuit identified this difference in antennae as the chief reason why the Commission cannot impose like operating rules for Gulf Carriers as it does for land carriers. Adoption of the land carriers' Joint Proposal would fail again at the D.C. Circuit, for precisely the same reason.

<u>The Joint Proposal does Not Benefit Public Service</u>

- The land carriers' notion that their Joint Proposal somehow enhances E-911 service is pure fiction. First, subscribers in the coastal waters (which is the focus of this proceeding) are receiving E-911 service. Second, the land carriers have no valid reason for not providing E-911 service to their subscribers on land. Third, the only factual subscriber capture report in this proceeding (which is in its fourth year) clearly demonstrates that land carriers are capturing Gulf Carriers' subscribers, not *vice versa*; thus, the land carriers' disingenuous E-911 argument completely lacks justification and credibility.

- The fact that land carriers are capturing Gulf Carriers' subscribers (again, according to the only factual study proffered in this nearly four-year-old proceeding) also belies the land carriers' claims that the Joint Proposal enhances provision of service to hand-held units at the shoreline, and provision of service by the carrier best situated to provide cost-effective service. The land carriers have the stronger signal at the license border - they even admit that on the second page of the Joint Proposal. Thus, the land carriers cannot possibly expect the Commission to believe that new rules are necessary to improve service to hand-held units at the shoreline.

- Furthermore, the current rules provide for the provision of cost-effective service to consumers. As the Enforcement Bureau pointedly stated in its *Bachow/Coastel v. GTE* decisions, the public interest is served by current set of options available to land carriers. The land carriers have the option of reaching agreements with the Gulf Carriers to provide service in the Gulf of Mexico. If the land carriers believe that they can provide better service in the Gulf than the Gulf Carriers, then the land carriers should reach agreements with the Gulf Carriers to do so. This is the precedent and public interest finding of the Commission.

The Joint Proposal does Not Benefit the Gulf Carriers

- The land carriers' inclusion of a section in their Joint Proposal indicating that their proposal benefits the Gulf Carriers in any way is outlandish. As discussed *infra*, the Joint Proposal is tantamount to a "move it and lose it" regulatory regime that the D.C. Circuit would certainly reject, based on its own precedent. Furthermore, the land carriers' Joint Proposal provides no basis for its assertion that Gulf Carriers would have more opportunity for inland coverage. However, the Gulf Carriers do accept the land carriers' admission that the land carriers currently have a stronger signal at the border (*see p.2*, stating that the Joint Proposal would allow Gulf Carriers a stronger signal strength at the land-based market border). The land carriers' Joint Proposal does not discuss how the theft of a ten-mile wide band of license territory from the Gulf Carriers would benefit those Gulf Carriers.

Conclusion

The land carriers have had nearly four years to provide the Commission with real-world data to support their attempt to steal license territory from the Gulf Carriers by means of the Commission's rulemaking processes. The land carriers have failed in that attempt. Instead, the land carriers have mocked the integrity of the Commission's rulemaking processes by relying on anecdotes and unsubstantiated assertions to support their efforts to effect a radical change of the Commission's rules.

The land carriers' Joint Proposal is their latest attempt at justifying their overreaching "grab" for no-cost license territory. The land carriers realize that their much smaller Gulf Carrier counterparts are compelled to respond to every unsubstantiated and illogical proposal that the land carriers present to the Commission. The land carriers engage in such conduct in an effort to drain the time, financial resources and will of these smaller Gulf Carriers. However, the land carriers' efforts are also wasting the resources of the Commission, and of the general public's tax dollars.

The facts of cellular provision in the Gulf of Mexico clearly show that the reasons for this proceeding are now moot. There is virtually seamless coverage in the waters of the Gulf of Mexico; the land carriers cannot, and do not, dispute this. Furthermore, the existence of the Second FNPRM has clearly removed all incentive for the land carriers to follow the mandate of Part 22 of the Commission's rules, and the Enforcement Bureau's decisions, and reach contour extension agreements with the Gulf Carriers. In filings to the Commission, Bachow/Coastel has detailed the stalling negotiation tactics of the land carriers it is forced to deal with, land carriers that are instead waiting for the "promised land" of a 10- or 12-mile wide band of free license territory. This proceeding is not bringing peace to the Gulf; rather, it has the opposite result.

Now, the land carriers claim that they can no longer serve the land. Upon a modicum of reflection, this is an incredible claim for any Commission licensee to make - that it cannot meet the requirements of its license. Even more incredible is that the land carriers now blame the Gulf Carriers for the land carriers' "inability" to serve land subscribers. Again, the land carriers make

this claim based upon anecdotes, not any real world data.

One land carrier in one market adjacent to the Gulf of Mexico decided it would benefit more by not re-engineering its system to provide service to its subscribers. Instead, in a ploy born of politics and not the public interest, it decided that it would benefit more by stranding those subscribers, and then pointing to that one situation as alleged justification for the creation of a "neutral" zone. After all, the cost of stranding some rural subscribers is outweighed by the awesome financial windfall that the land carrier would receive if the Commission gave the land carrier a 10- or 12-mile wide band of spectrum, free of charge. The land carriers are not unable to serve their license areas; they are simply *unwilling* to do so.

This proceeding is not about the land carriers' unwillingness to serve their own customers; it is about the service gaps in the waters of the Gulf of Mexico that existed in 1997. Now, through maps and text filed with their Comments, Reply Comments and *ex parte* filings with the Commission, the Gulf Carriers have conclusively demonstrated that there is reliable service in the waters of the Gulf of Mexico. The land carriers no longer dispute this. Thus, it is incumbent upon the Commission to respond to the D. C. Circuit's remand by issuing an Order that terminates this proceeding, because the bases for this proceeding are moot.

The Commission has given the land carriers nearly four years to conjure real-world data to support the taking of an immense amount of license territory from the Gulf Carriers. The land carriers have still failed to do so. The Commission cannot legitimately give the land carriers any more time.

# BACHOW/COASTEL, L.L.C.

Cellular Service and Other Commercial Mobile Radio Services
in the Gulf of Mexico, WT Docket No. 97-112, CC Docket No. 90-6

January 8, 2001

## THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

- The Proposed Rules Lack Need and Justification
- The Current Rules Have Produced Results
- The Commission's Proposed Use of Uniform Propagation Methodology for SABs Over Water Should Not Be Adopted
- The Proposed Rules Would Not Reduce Costs
- The Proposed Rules Will Not Undercut Revenue
- The Proposed Rules Result In A License Modification

## The Proposed Rules Lack Need and Justification

- The Second FNPRM does not produce any empirical or statistical justification for its proposed rules, and does not demonstrate a "need" in the public interest for the proposed rules.

- The Second FNPRM is seemingly based upon circumstances that no longer exist. Service along coastal areas of the Gulf of Mexico is now reliable. Bachow/Coastel has nearly doubled the number of cell sites that it operates in the Gulf in the last three years.

- The proposed rules would hamper future coverage of the Gulf's coastal areas, as they would freeze the Gulf carriers' service areas into their current SABs, destroying the Gulf carriers' planned network expansions.

- There is service off the Gulf coast of Florida, despite the Presidential proclamation banning oil and gas drilling off that coast. The land carriers operate more than 4,650 square miles of SAB extensions into the Gulf of Mexico Service Area ("GMSA") off the Florida coast, more than meeting the public's demand for cellular service there.

- The land carriers point to only anecdotes of service difficulties in the Gulf coastal waters, which are largely the result of their own inefficient engineering designs, and due to the land carriers' motivations in this rulemaking proceeding for the Commission to give the land carriers license territory from the Gulf carriers free of charge.

The Proposed Rules Lack Need and Justification

The Current Rules Have Produced Results

The Commission's Proposed Use Of Outdated Propagation Methodology For SABs Does Not Have Should Not Be Adopted

The Proposed Rules Would Not Reduce Conflict

The Proposed Rules Will Fail Judicial Review

The Proposed Rules Result In Licensee Modification

## The Current Rules Have Produced Results

- The current rules, and the Enforcement Bureau's decision in *Bachow/Coastel, L.L.C. v. GTE Wireless of the South, Inc.*, provide certainty and order in the Gulf, and reduce the "conflict" cited in the Second FNPRM. This precedent and certainty guiding the conduct of carriers in the GMSA that was not present when the Commission first issued the Second FNPRM.

- There is no reason for "confusion" about what entities should provide service to the coastal waters of the Gulf. Since August 14, 1985, or, 15 years ago, the Commission authorized the Gulf carriers to provide service to coastal waters. "Conflicts" only arose when land carriers attempted to steal license territory from the Gulf carriers through illegal SAB extensions.

- The current rules fostered the growth of expanded cellular coverage in the Gulf to achieve reliable cellular service to coastal areas and "to provide the best quality of service to the public." Under the current rules: Bachow/Coastel has nearly doubled its number of cell sites in the Gulf; PetroCom has reached three collocation agreements with land carriers (all before the release of the Second FNPRM); and land carriers are availing themselves of mechanisms under the current regulatory scheme such as STA to serve any temporarily unserved coastal areas.

- The just and reasonable rate provisions of Sections 201 and 202 of the Act effectively cover roaming rates, as do roaming agreements, which were more prevalent under the current rules before the release of the Second FNPRM.

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The Proposed Rules Lack Need and Justification

The Current Rules Have Produced Results

The Commission's Proposed ofdz Uniform Propagation Methodology for SMRs Over Water Should Not Be Adopted

The Proposed Rules Would Not Reduce Conflict

The Proposed Rules Will Not Induce Review

The Proposed Rules Result in a Limited Modification

**The Current Rules Have Produced Results**

- In contrast to the success of the current rules, the Second FNPRM has led to intractability of land carriers in their dealings with Gulf carriers, in anticipation of the "license area grab" offered by the Second FNPRM. Land carriers have stalled negotiations in complaint proceedings in the hope that the Commission would adopt the rules proposed in the Second FNPRM before taking any enforcement action against the land carriers. Significantly, no Gulf carrier has been able to successfully negotiate a collocation agreement with a land carrier since the Commission released the Second FNPRM.

- It should be clear to the Commission that the current regulatory scheme benefits the public interest far more than the rules proposed in the Second FNPRM.

The Proposed Rules Lack Need and Justification

The Current Rules Have Produced Results

The Commission's Proposal of a Uniform Propagation Methodology for SABs Over Water Should Not Be Adopted

The Proposed Rules Would Not Reduce Conflict

The Proposed Rules Will Not Reduced Errors

The Proposed Rules Reach Not Licensee Modifications

## The Commission's Proposal of a Uniform Propagation Methodology for SABs Over Water Should Not Be Adopted

- The Commission should not adopt a uniform propagation measurement methodology for SABs over water, whether they originate from a water-based or land-based cell.

- A new formula would be administratively unwieldy and unnecessarily complex.

- The appropriate use of the existing formulae can rectify the interference problems in the Gulf, which are primarily the result of illegal SAB extensions into the Gulf from land carriers.

- If a land-based cell site extends an SAB into the Gulf, the land carrier must either remove the contour extension or negotiate a contract extension agreement, and vice versa. This serves the Commission's objective of carriers working out the details of reliable cellular service along their respective borders without burdening valuable Commission staff resources.

- Conversely, Gulf carriers should also include two calculations and depictions of all current and proposed sites within 35 miles of the coastline.

- Thus, the current regulatory scheme minimizes the interference problem for both Gulf carriers and land carriers, and makes negotiated agreements between neighboring carriers the best solution for providing reliable coverage along carriers' borders.

The Proposed Rules Lack Need and Justification

The Current Rules Have Produced Results

The Commission's Proposal of a Uniform Propagation Methodology for SABs Over Water Should Not Be Adopted

The Proposed Rules Would Not Produce Conflict

The Proposed Rules Will Fail Judicial Review

The Proposed Rules Disrupt Licensee Modifications

## The Proposed Rules Would Not Reduce Conflict

- Contrary to the Commission's primary goal, its proposed rules would not reduce conflict between the land and Gulf carriers. The Second FNPRM's proposed rules would merely relocate the conflict 12 miles into the Gulf carriers' existing CGSAs. Conflicts between any two carriers, whether on land or in the Gulf, will always occur at the borders.

- The proposed rules would permit *de minimis* extensions into the Gulf carriers' Exclusive Zone, which is the same type of rule that the land carriers have exploited to gain coverage into the Gulf carriers' CGSA. This also has created harmful interference to the Gulf carriers' provision of service in the Gulf. This rule proposal also demonstrates how the Commission is re-licensing the Gulf carriers' license area to the land carriers, free of charge, and without any merit.

- Allowing *de minimis* extensions has historically been a "one-way street" around the Gulf. As the D. C. Circuit noted in *Petroleum*, the Commission has granted *de minimis* extensions into the Gulf, but has not granted *de minimis* extensions to Gulf carriers for SAB extensions over land. That situation continues today.

The Proposed Rules Lack Need and Justification

The Current Rules Have Produced Results

The Commission's Proposed Use Uniform Designation Methodology for Mobile Over Water Should Not Be Adopted

The Proposed Rules Would Not Reduce Conflict

The Proposed Rules Will Fail Judicial Review

The Proposed Rules Result In a Unique Modification

**The Proposed Rules Will Fail Judicial Review**

- The Second FNPRM, by freezing Gulf carriers into their current service areas in the "Coastal Zone" and forcing the rest of the Gulf carriers' operations into an arbitrarily-defined "Exclusive Zone," fails again to consider the fact that the Gulf carriers are at the mercy of oil drilling platforms that, unlike land-based transmitter sites, may move or be deactivated on a fairly routine basis.

- The Second FNPRM's "move it and lose it" licensing scenario also lacks justification, and fails to consider what the D.C. Circuit termed the "unique plight" of Gulf carriers. In *Petroleum*, the D.C. Circuit rebuked the Commission for "silently" glossing over the Gulf carriers' unique plight, and for adopting rules that made "water-based and land-based licensees alike adhere to a uniform" rule.

- The Second FNPRM, with its rigid license areas and "move it and lose it" features, does not serve the Commission's stated goal of providing "regulatory flexibility to Gulf carriers because of the transitory nature of water-based sites," and is thus arbitrary and capricious.

- The Second FNPRM repeats the same mistake as the *Third Report and Order*, which the D.C. Circuit rebuffed, by failing to account for the differences between Gulf carriers and land carriers with the creation of the "Coastal Zone."

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**The Proposed Rules Will Fail Judicial Review**

- The unique challenges faced by the Gulf carriers, namely the "total dependence on the location of oil and gas platforms, remote equipment sites, fluctuating service areas, and attendant high costs," was again treated by the Commission in the Second FNPRM in "vexingly terse" fashion. The Commission's perfunctory, unsupported statement of need for the Second FNPRM's proposed rules will prevent a federal court from affirming these rules upon their certain appeal.

- The complete lack of evidentiary support for the rules proposed in the Second FNPRM falls far short of the judicial standard of "substantiality of the evidence." Given that the Commission has no record or data supporting its conclusion that its proposed rules are necessary, an appellate court would likely set aside the Second FNPRM. Under the Administrative Procedure Act, the court "must set aside a Commission order if the record lacks 'substantial evidence' to support its conclusion, 5 U.S.C. § 706(2)(E), considering the 'whole record,' § 706."

The Proposed Rules Lack Proof and Justification

The Current Rules Have Produced Results

The Commerce's Proposal of a Uniform Propagation Methodology for SAEs Over Water Should Not Be Adopted

The Proposed Rules Would Not Reduce Conflict

The Proposed Rules Will Not Survive Judicial Review

The Proposed Rules Result in a License Modification

## The Proposed Rules Result in a License Modification

- The proposed rules severely reduce Bachow/Coastel's license area, far beyond a *de minimis* amount, thus triggering the hearing provisions of Section 316 of the Act.

- The proposed rules would remove all geographic protection from interference afforded to Bachow/Coastel under its existing license, creating objectionable electrical interference and triggering the procedural protections of Section 316 of the Act that allow Bachow/Coastel the opportunity to show in a hearing why the Commission should not modify Bachow/Coastel's license.

- Bachow/Coastel has recourse to a hearing pursuant to Section 316 of the Act because the Second FNPRM is not a rulemaking of general applicability. Commission and court precedent state that rules of general applicability are not based upon any facts peculiar to a licensee, and are not directed specifically at a licensee, and that rules of general applicability must apply to all carriers.

- This is not so in the Second FNPRM, which proposes rules based entirely upon Bachow/Coastel's status as a Gulf-based cellular licensee, and are directed specifically and exclusively at Bachow/Coastel and PetroCom.

Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.

o Microfilm, microform, certain photographs or videotape.

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2 LARGE MAP