

February 5, 2003

Notice of Ex Parte Communication

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: MM Docket No. 00-244

Dear Ms. Dortch:

Jack Goodman, Karen Kirsch and the undersigned of NAB; Brian Madden of Leventhal, Senter & Lerman; and Richard Bodorff and Chris Robbins of Wiley Rein & Fielding met with Sarah Whitesell and Stacy Robinson on February 4, 2003, and with Catherine Bohigian on February 5, 2003, to discuss the definition of radio markets. We made the following points:

- Due to the scattered location and widely varying signal strength of radio stations, any method of defining radio markets will produce a certain number of anomalies. The current market definition method has produced only a small number of anomalies in comparison to the large number of radio transactions since 1996. The current method is also stable in operation, well understood by the industry, and accurately identifies the stations that potentially compete against each other for listeners and advertisers. Adopting a revised market definition will only create a different and unpredictable set of anomalies.
- The Commission lacks the authority to alter its radio market definition at this juncture. Because Congress in 1996 addressed local radio ownership limits and did not change the Commission's well-established interpretation of what constitutes a radio market, then that interpretation should, under existing court precedent, be regarded as the interpretation intended by Congress. Certainly the Commission should not alter its market definition to cut back on the level of local radio consolidation expressly approved by Congress in 1996.

- The Commission should not adopt Arbitron radio markets, for a variety of reasons. Over 40% of all radio stations in the U.S. are not located in Arbitron markets. Arbitron data and markets also lack the neutrality and consistency needed for regulatory tools. And in many Arbitron markets, especially the smaller ones, consumers listen more to “out-of-market” stations than to “in-market” stations.
- If the Commission were to alter its market definition, existing radio combinations should be grandfathered and should also be freely transferable to new owners. Group owners acquired their stations in reliance on the Commission’s current rules and have consolidated the operation of their stations in the reasonable expectation that the stations would be transferable as a group.

At this meeting, the attached handouts were also distributed. The “radio market definition” handout was used to illustrate the FCC’s current method of defining radio markets. The “technical statement” handout was discussed as one example of how the Commission might address concerns with its current method of counting the number of stations in a radio market. Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink that reads "Jeannine Zimmerman". The signature is written in a cursive, flowing style.

Attachments

cc:

(w/o attachments)

Catherine Bohigian

Stacy Robinson

Sarah Whitesell

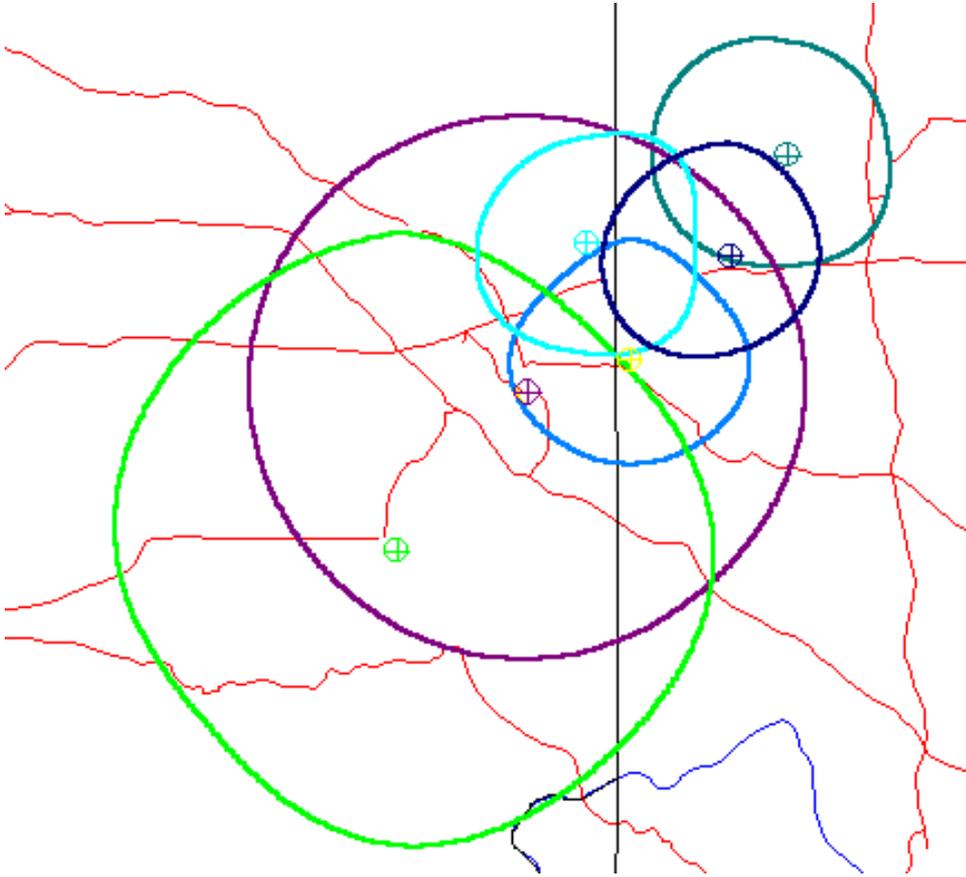
Radio Market Definition

- ❖ FCC should not alter its radio market definition in a manner contrary to congressional intent.
 - When it adopted the 1996 Telecommunications Act, Congress made no change to the FCC's methodology for defining radio markets in use since 1992, so the current methodology is, and should be regarded as, the one intended by Congress.
- ❖ There is no "perfect" method of defining radio markets.
 - The FCC's current market definition method has produced a very small number of anomalies in comparison to a very large number of transactions.
 - Any revised market definition will create a different and unpredictable set of anomalies, due to the scattered location and widely varying signal strength of stations.
- ❖ The existing contour overlap method of defining markets best identifies the stations that have the potential to compete against each other.
 - Current method of determining the "numerator" may be a superior method of gauging the true level of competition in local markets, as it reflects service areas, not listener tastes, promotional campaigns or programming decisions.
- ❖ Arbitron market definitions should not be used.
 - Over 40% of commercial radio stations are not located in Arbitron metro markets, requiring another, separate new definition of markets for these stations, which will have its own different set of anomalies.
 - Arbitron's purpose is to serve advertisers, and its data lack the neutrality and consistency needed for a regulatory tool. In particular, Arbitron market designations are susceptible to inexplicable fluctuations, and can be manipulated by subscribing stations. Separate arrangements would need to be made for access by all parties to Arbitron data.
- ❖ If alterations in market definition methodology are made at this juncture, existing combinations should be grandfathered and freely transferable, or the economic valuations of existing combinations will be substantially affected, causing disruption in the marketplace.

Radio Market Definition

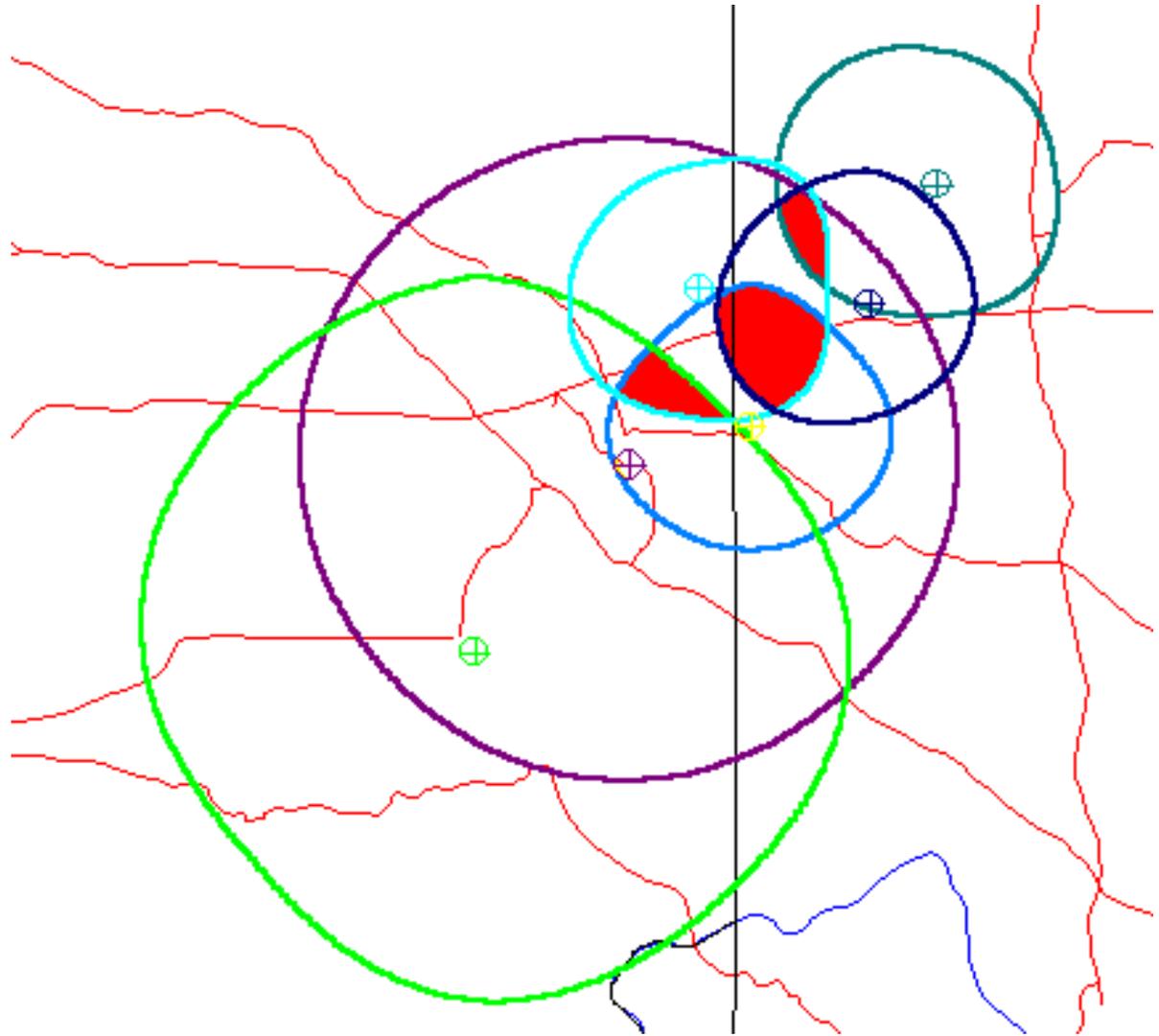


What's the issue?

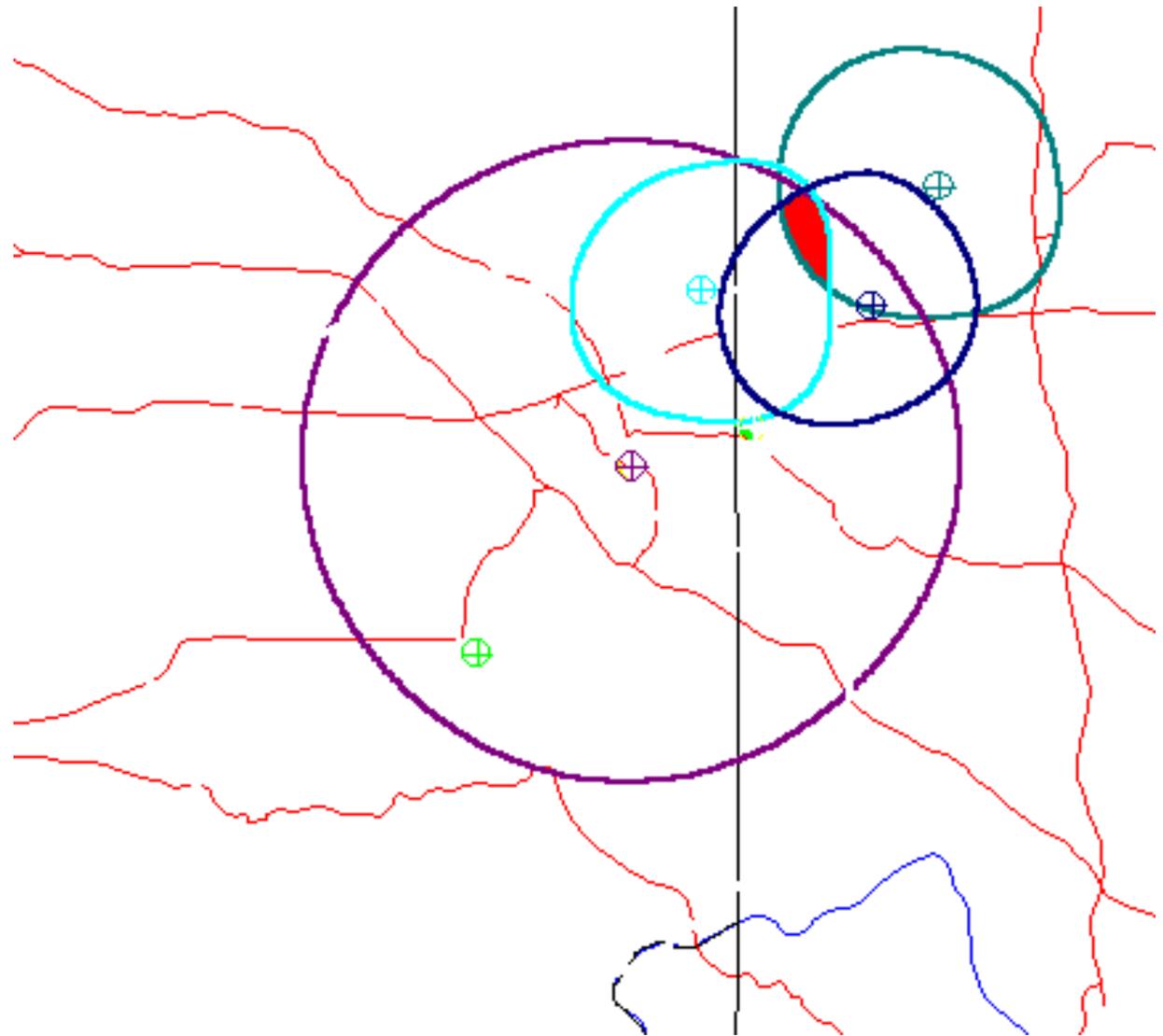


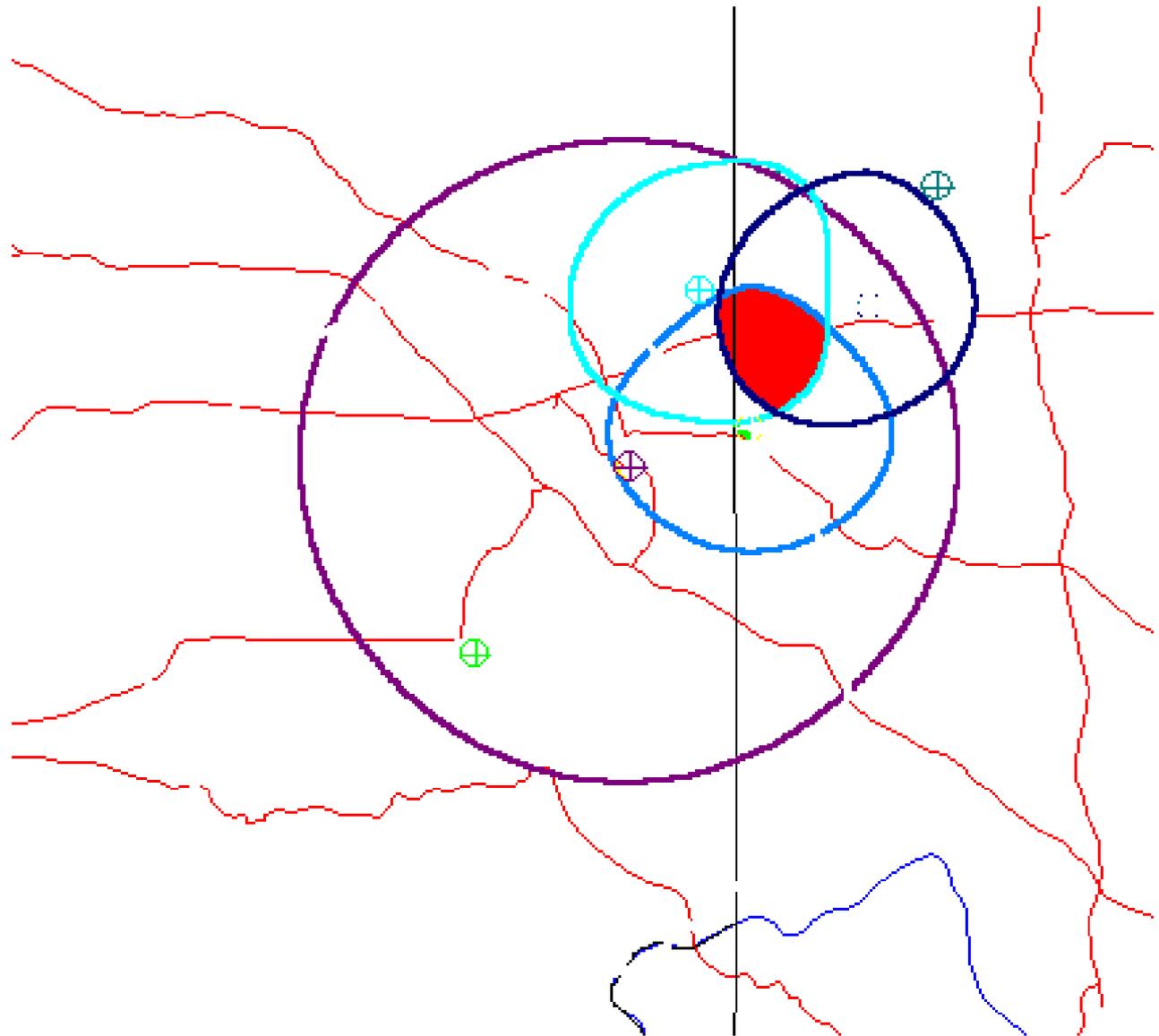
Determine the same service overlap of the stations to be purchased and currently owned

**There are
three
separate FM
markets,
with the
overlap
areas shown**

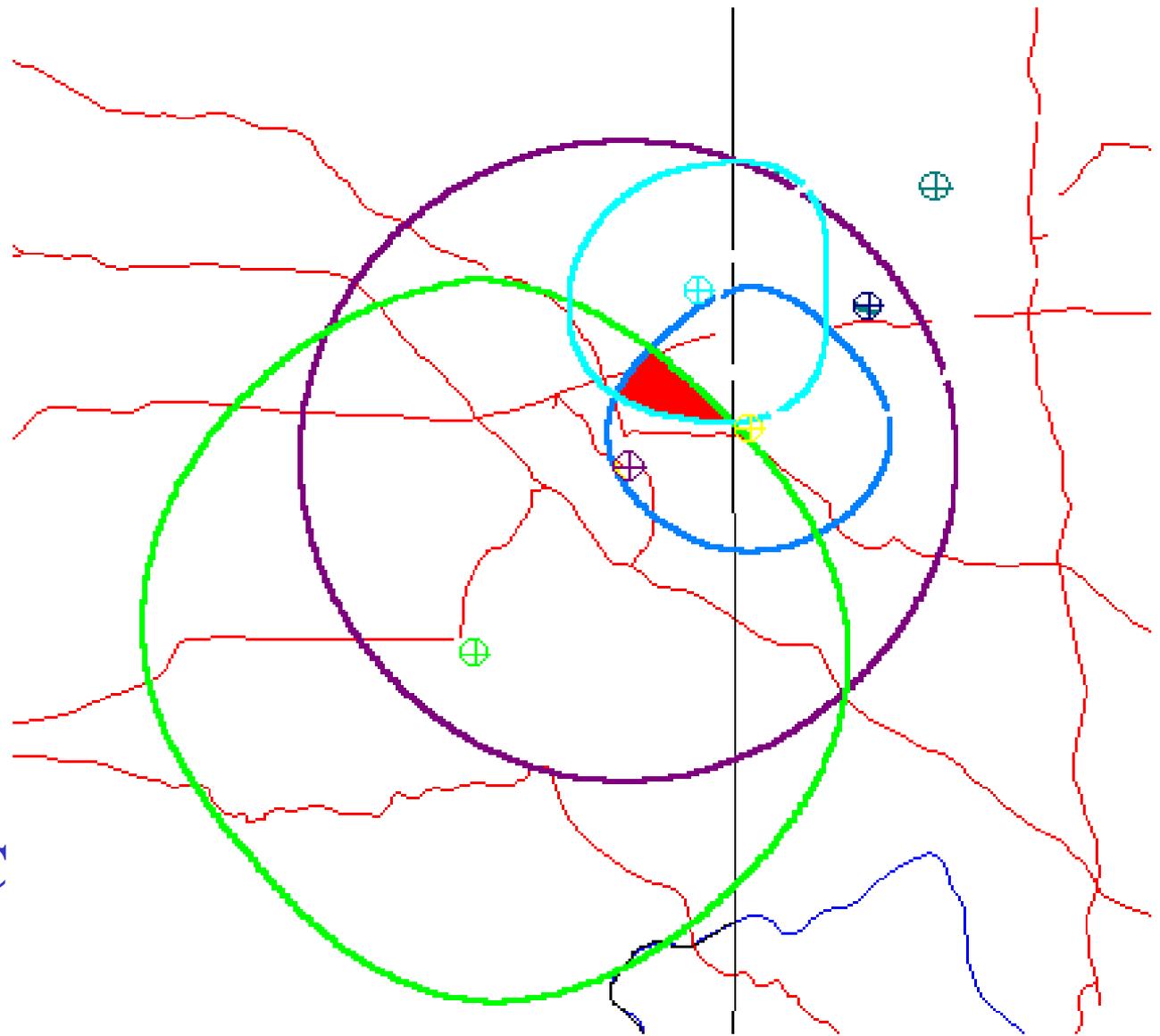


**Market
A**



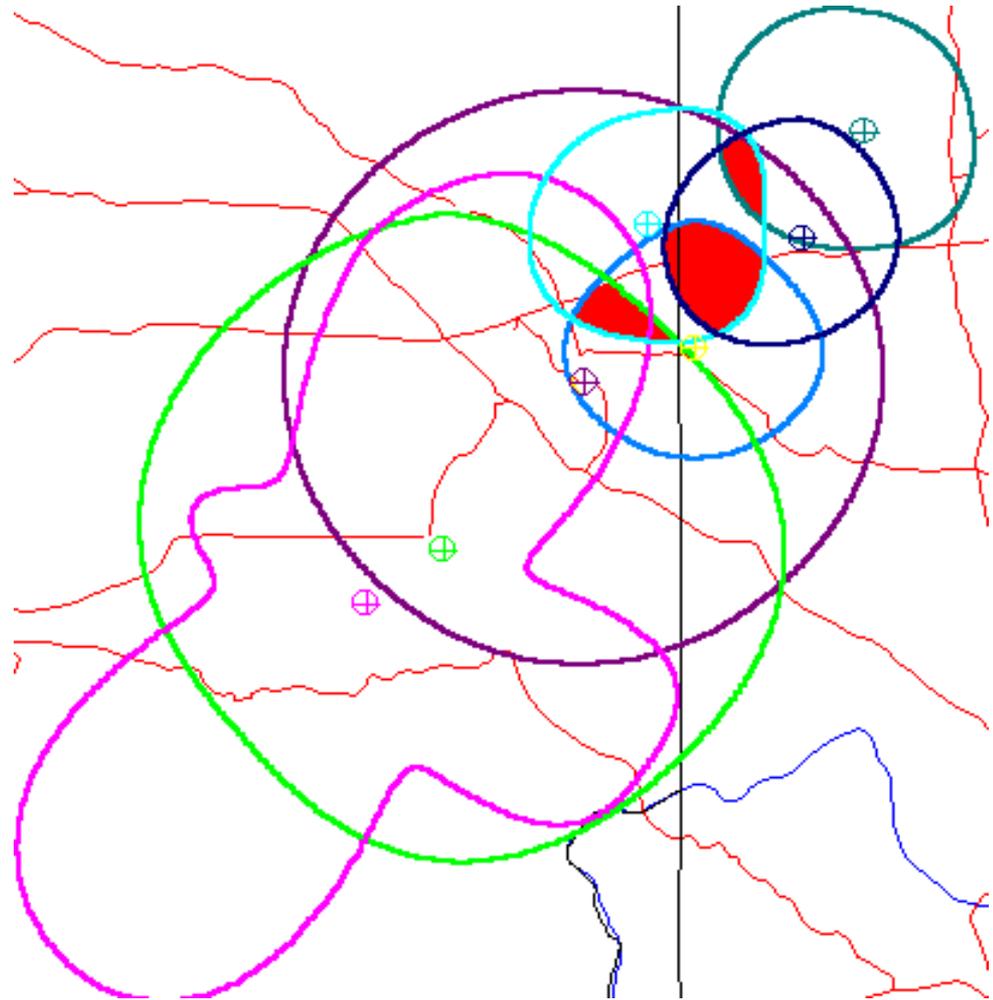


Market B

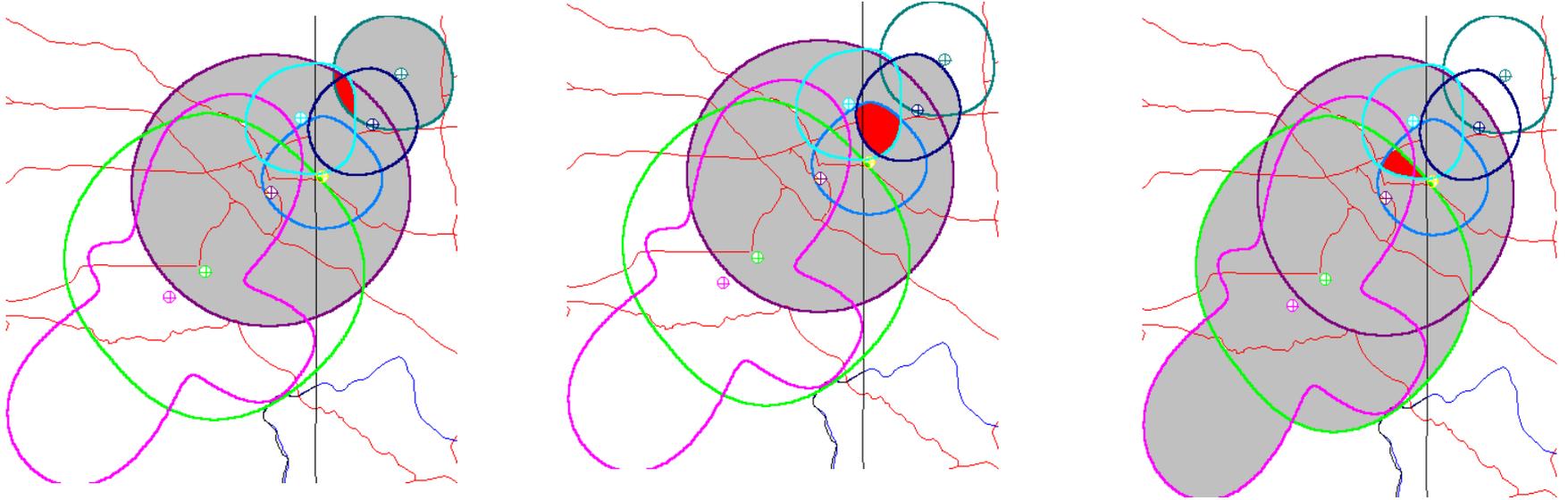


Market C

In addition, stations in other services, whether to be purchased or already owned, are included, but only if they serve the overlap area

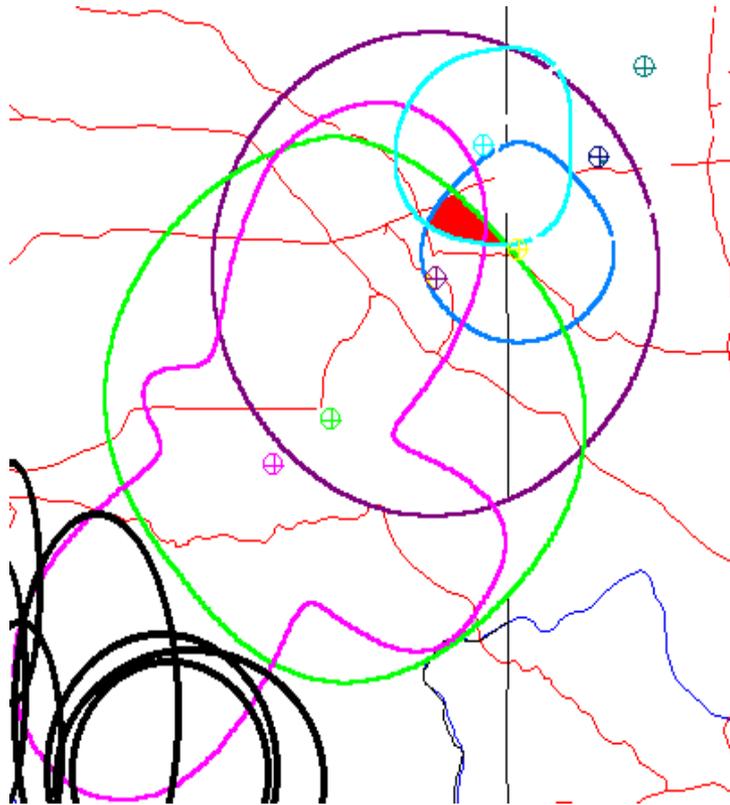


FCC Calculations Result in Three Separate Markets



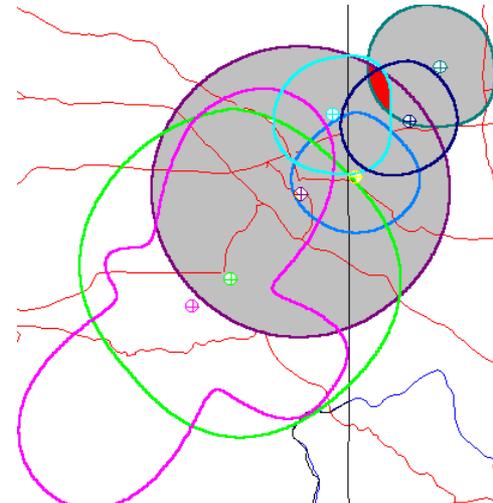
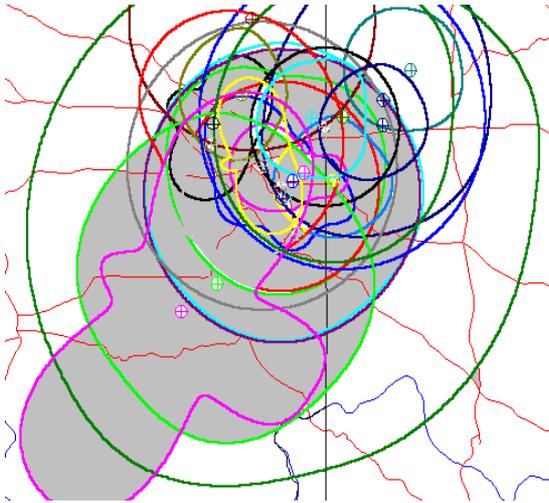
To determine the market size, the total number of signals which serve any portion of each defined “radio market” are counted

Why the Controversy?



The total number of stations in the radio market can be “expanded” by counting “distant” signals which are picked up at the far edge of coverage by a single station, possibly raising the size of the market to a higher tier

Why the Controversy?



“Expanding” vs. “Shrinking” Market

All stations which overlap *any* part of the market are counted, “expanding” total market size, but owned or to-be-acquired stations are ignored unless they overlap with *every* station in the duopoly combination.

TECHNICAL STATEMENT
RADIO MULTIPLE OWNERSHIP ANALYSIS
JANUARY 2003

A multiple ownership analysis was prepared considering the following commonly owned radio stations:

Call Sign	City of License	Facilities
WOAI(AM)	San Antonio, TX	1200 kHz, 50 kW, U, ND1
KVET(AM)	Austin, TX	1300 kHz, 5 kW, U, DA2
KPEZ(FM)	Austin, TX	Channel 272C2, 26 kW, 209 m
KVET-FM	Austin, TX	Channel 251C1, 100 kW, 209 m
KASE-FM	Austin, TX	Channel 264C, 100 kW, 363 m
KHFI-FM	Georgetown, TX	Channel 244C1, 100 kW, 290 m
KFMK(FM)	Round Rock, TX	Channel 290C2, 4.5 kW, 397 m

Radio Markets

The “radio market” applicable to common ownership of the subject stations is defined as the area encompassed by the mutually overlapping principal community contours of the commonly owned stations. The predicted principal contours of WOAI(AM), KVET(AM), KPEZ(FM), KVET-FM, KASE-FM, KHFI-FM and KFMK(FM) are shown in Exhibit E-1 herein. There is one “radio market” for analysis under the current Commission’s Rules¹.

Market 1 is defined by the principal community contours of WOAI(AM), KVET(AM), KPEZ(FM), KVET-FM, KASE-FM, KHFI-FM and KFMK(FM).

If WOAI(AM), a Class A, were limited to a non-directional 5 kilowatts facility (Regional Class B facility), there would be two “radio markets” for analysis.

Market 1A would be defined by the principal community contours of KVET(AM), KPEZ(FM), KVET-FM, KASE-FM, KHFI-FM and KFMK(FM).

Market 2A would be defined by the principal community contours of WOAI(AM), KVET(AM), KVET-FM, KASE-FM and KHFI-FM.

This study demonstrates that there would be fewer radio stations in Market 1A than in Market 1 as a result of the change in treatment of the WOAI(AM) contour.

¹ See Section 73.3555 of the FCC Rules.

Count of Stations in Defined Markets

The number of radio stations in each “radio market” is determined by counting the operating, commercial stations having principal community contours which overlap or intersect the principal community contours which define the radio market, plus the subject co-owned stations.

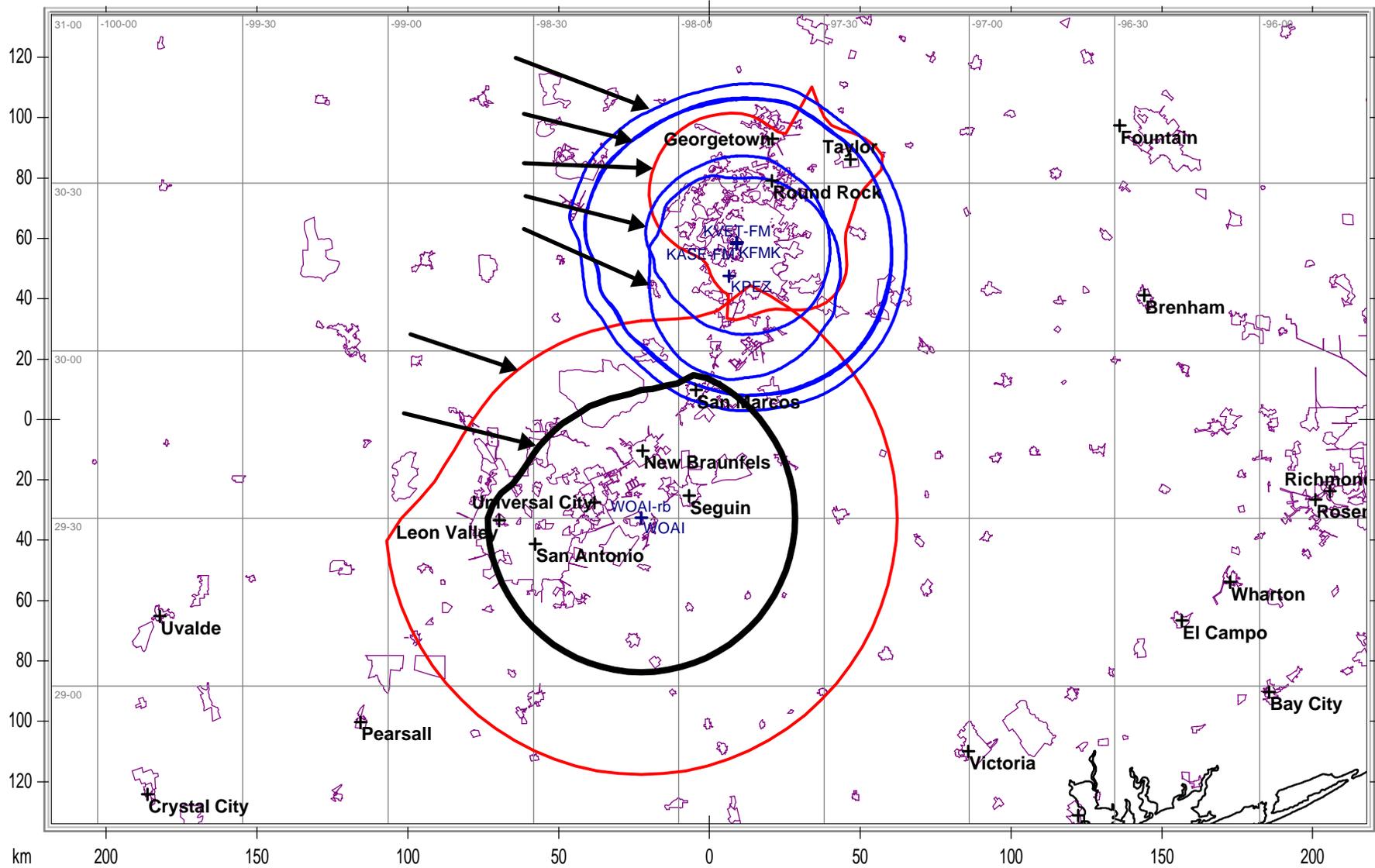
In Market 1, there are 87 radio stations, including the subject stations, (48 FM and 39 AM) that intersect or overlap the “radio market.” Exhibit E-2 shows the stations, including the subject stations, that intersect or overlap the “radio market.”

In Market 1A, there are 41 radio stations, including the subject stations, (23 FM and 18 AM) that intersect or overlap the “radio market.” Exhibit E-3 shows the stations, including the subject stations, that intersect or overlap the “radio market.”

Table 1 is the tabulation of the radio stations, including the subject stations that define the market, identified in Market 1. Table 2 is the tabulation of the radio stations, including the subject stations that define the market, identified in Market 1A.

Only known licensed, operation commercial stations were employed for the study. Distances to contours for AM stations were predicted using the antenna patterns as identified in the Commission’s CDBS database and the appropriate Ground Wave Field Strength versus Distance Graph of 47 CFR 73.184. Ground conductivities were obtained from FCC Figure M3. Distances to the FM contours were determined based on the method of 47 CFR 73.313. Terrain data was derived from the N.G.D.C. 30-second computer database for each of the FM stations using radials spaced every 10 degrees of azimuth.

The above is based on the Consolidated Data Base System (“CDBS”). This data base replaced the older very accurate technical file in January 2000. The CDBS files do not yet possess the same accuracy as the old data base.



TECHNICAL STATEMENT
RADIO MULTIPLE OWNERSHIP ANALYSISTabulation of FM Stations in Defined Radio Market 1

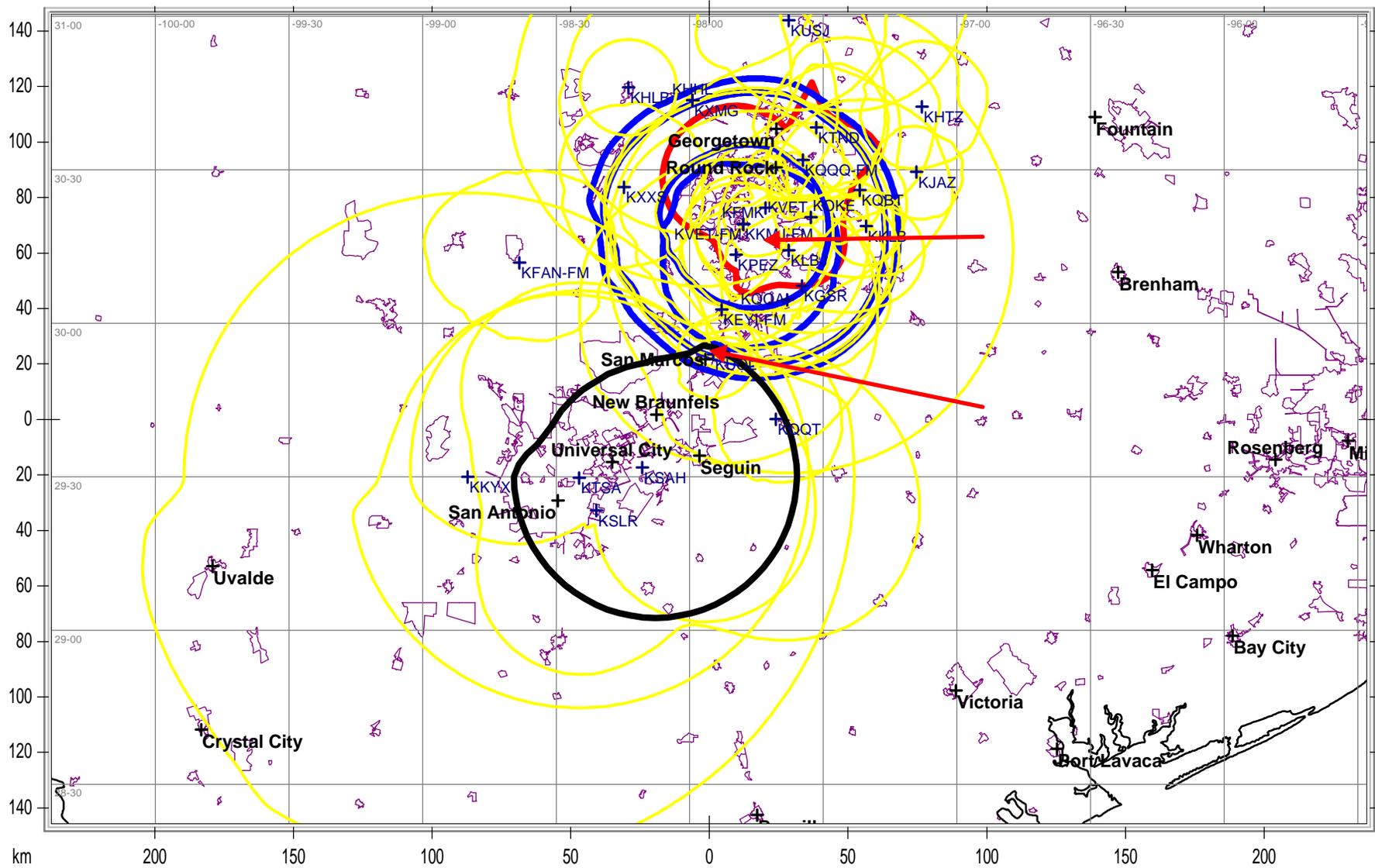
<u>STATION COUNT</u>	<u>STATION</u>	<u>FREQUENCY MHz</u>	<u>CITY of LICENSE</u>	<u>STATE</u>
1	KAJA	97.3	SAN ANTONIO	TX
2	KAMX	94.7	LULING	TX
3	KASE-FM	100.7	AUSTIN	TX
4	KBBT	98.5	SCHERTZ	TX
5	KBey	92.5	BURNET	TX
6	KBUC	95.7	JOURDANTON	TX
7	KCJZ	106.7	TERRELL HILLS	TX
8	KCOR-FM	95.1	COMFORT	TX
9	KCYy	100.3	SAN ANTONIO	TX
10	KEMA	94.5	THREE RIVERS	TX
11	KEYI-FM	103.5	SAN MARCOS	TX
12	KFAN-FM	107.9	JOHNSON CITY	TX
13	KFMK	105.9	ROUND ROCK	TX
14	KGSR	107.1	BASTROP	TX
15	KHFI-FM	96.7	GEORGETOWN	TX
16	KHHL	98.9	LEANDER	TX
17	KHTZ	105.1	CAMERON	TX
18	KISS-FM	99.5	SAN ANTONIO	TX
19	KJAZ	99.3	THORNDALE	TX
20	KKLB	92.5	ELGIN	TX
21	KKMJ-FM	95.5	AUSTIN	TX
22	KLBJ-FM	93.7	AUSTIN	TX
23	KLEY-FM	94.1	FLORESVILLE	TX
24	KLMO-FM	98.9	DILLEY	TX
25	KMFR	104.1	PEARSALL	TX
26	KNBT	92.1	NEW BRAUNFELS	TX
27	KONO-FM	101.1	HELOTES	TX
28	KPEZ	102.3	AUSTIN	TX
29	KQBT	104.3	TAYLOR	TX
30	KQQQ-FM	92.1	HUTTO	TX
31	KQQT	106.3	GONZALES	TX
32	KQXT-FM	101.9	SAN ANTONIO	TX
33	KROM	92.9	SAN ANTONIO	TX
34	KROX-FM	101.5	BUDA	TX
35	KSJL-FM	92.5	DEVINE	TX
36	KSMG	105.3	SEGUIN	TX
37	KTFM	102.7	SAN ANTONIO	TX
38	KTND	107.7	GEORGETOWN	TX
39	KTNR	92.1	KENEDY	TX
40	KUSJ	105.5	HARKER HEIGHTS	TX

Tabulation of FM Stations in Defined Radio Market 1 (continued)

<u>STATION COUNT</u>	<u>STATION</u>	<u>FREQUENCY MHz</u>	<u>CITY of LICENSE</u>	<u>STATE</u>
41	KVCQ	97.7	CUERO	TX
42	KVET-FM	98.1	AUSTIN	TX
43	KXMG	93.3	CEDAR PARK	TX
44	KXTN-FM	107.5	SAN ANTONIO	TX
45	KXXM	96.1	SAN ANTONIO	TX
46	KXXS	104.9	MARBLE FALLS	TX
47	KYKM	92.5	YOAKUM	TX
48	KZEP-FM	104.5	SAN ANTONIO	TX

Tabulation of AM Stations in Defined Radio Market 1

<u>STATION COUNT</u>	<u>STATION</u>	<u>FREQUENCY kHz</u>	<u>CITY of LICENSE</u>	<u>STATE</u>
1	KAML	990	KENEDY-KARNES CITY	TX
2	KBIB	1000	MARION	TX
3	KBRN	1500	BOERNE	TX
4	KCHL	1480	SAN ANTONIO	TX
5	KCOR	1350	SAN ANTONIO	TX
6	KCTI	1450	GONZALES	TX
7	KCWM	1460	HONDO	TX
8	KDRY	1100	ALAMO HEIGHTS	TX
9	KEDA	1540	SAN ANTONIO	TX
10	KELG	1440	MANOR	TX
11	KENS	1160	SAN ANTONIO	TX
12	KFIT	1060	LOCKHART	TX
13	KFNI	1380	PLEASANTON	TX
14	KFON	1490	AUSTIN	TX
15	KGNB	1420	NEW BRAUNFELS	TX
16	KHLB	1340	BURNET	TX
17	KIXL	970	DEL VALLE	TX
18	KJCE	1370	ROLLINGWOOD	TX
19	KKYX	680	SAN ANTONIO	TX
20	KLBJ	590	AUSTIN	TX
21	KLUP	930	TERRELL HILLS	TX
22	KOKE	1600	PFLUGERVILLE	TX
23	KONO	860	SAN ANTONIO	TX
24	KQQA	1530	CREEDMOOR	TX
25	KSAH	720	UNIVERSAL CITY	TX
26	KSJL	810	SOMERSET	TX
27	KSLR	630	SAN ANTONIO	TX
28	KTEM	1400	TEMPLE	TX
29	KTKR	760	SAN ANTONIO	TX
30	KTMR	1130	EDNA	TX
31	KTSA	550	SAN ANTONIO	TX
32	KTXZ	1560	WEST LAKE HILLS	TX
33	KUOL	1470	SAN MARCOS	TX
34	KVET	1300	AUSTIN	TX
35	KWED	1580	SEGUIN	TX
36	KWNX	1260	TAYLOR	TX
37	KXTN	1310	SAN ANTONIO	TX
38	KZDC	1250	SAN ANTONIO	TX
39	WOAI	1200	SAN ANTONIO	TX



TECHNICAL STATEMENT
RADIO MULTIPLE OWNERSHIP ANALYSISTabulation of FM Stations in Defined Radio Market 1A

<u>STATION COUNT</u>	<u>STATION</u>	<u>FREQUENCY MHz</u>	<u>CITY of LICENSE</u>	<u>STATE</u>
1	KAMX	94.7	LULING	TX
2	KASE-FM	100.7	AUSTIN	TX
3	KEYI-FM	103.5	SAN MARCOS	TX
4	KFAN-FM	107.9	JOHNSON CITY	TX
5	KFMK	105.9	ROUND ROCK	TX
6	KGSR	107.1	BASTROP	TX
7	KHFI-FM	96.7	GEORGETOWN	TX
8	KHHL	98.9	LEANDER	TX
9	KHTZ	105.1	CAMERON	TX
10	KJAZ	99.3	THORNDALE	TX
11	KKLB	92.5	ELGIN	TX
12	KKMJ-FM	95.5	AUSTIN	TX
13	KLBJ-FM	93.7	AUSTIN	TX
14	KPEZ	102.3	AUSTIN	TX
15	KQBT	104.3	TAYLOR	TX
16	KQQQ-FM	92.1	HUTTO	TX
17	KQQT	106.3	GONZALES	TX
18	KROX-FM	101.5	BUDA	TX
19	KTND	107.7	GEORGETOWN	TX
20	KUSJ	105.5	HARKER HEIGHTS	TX
21	KVET-FM	98.1	AUSTIN	TX
22	KXMG	93.3	CEDAR PARK	TX
23	KXXS	104.9	MARBLE FALLS	TX

Tabulation of AM Stations in Defined Radio Market 1A

<u>STATION COUNT</u>	<u>STATION</u>	<u>FREQUENCY kHz</u>	<u>CITY of LICENSE</u>	<u>STATE</u>
1	KELG	1440	MANOR	TX
2	KFIT	1060	LOCKHART	TX
3	KHLB	1340	BURNET	TX
4	KIXL	970	DEL VALLE	TX
5	KJCE	1370	ROLLINGWOOD	TX
6	KKYX	680	SAN ANTONIO	TX
7	KLBJ	590	AUSTIN	TX
8	KOKE	1600	PFLUGERVILLE	TX
9	KQQA	1530	CREEDMOOR	TX
10	KSAH	720	UNIVERSAL CITY	TX
11	KSLR	630	SAN ANTONIO	TX
12	KTEM	1400	TEMPLE	TX
13	KTSA	550	SAN ANTONIO	TX
14	KTXZ	1560	WEST LAKE HILLS	TX
15	KUOL	1470	SAN MARCOS	TX
16	KVET	1300	AUSTIN	TX
17	KWNX	1260	TAYLOR	TX
18	WOAI	1200	SAN ANTONIO	TX