

DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAY 20 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Victoria and George West, Texas))

MB Docket No. 03-56
RM-10662

To: Assistant Chief, Audio Division

REPLY COMMENTS OF VICTORIA RADIOWORKS, LTD

Victoria RadioWorks, Ltd., licensee of Station KEPG, Channel 265A, Victoria, Texas ("KEPG"), hereby replies to the "Comments and Counterproposal" ("Counterproposal") of M. C. Vargas ("Vargas")¹ filed in response to the *Notice of Proposed Rule Making* ("NPRM"), DA 03-625, released in this proceeding on March 14, 2003. As shown below, KEPG does not object to the Counterproposal, provided the channel reallocated from George West to Three Rivers, Texas, is 292A rather than 265A. Channel 265A, which Vargas proposes for allocation to Three Rivers, must be removed from the George West-Three Rivers area to accommodate KEPG's Class C3 upgrade on Channel 265 at Victoria, Texas.

Channel 292A can be reallocated to Three Rivers to accommodate Vargas. At page 1 and Exhibits A and B of the attached Allocations Statement of John R. Furr, it is shown that such a reallocation would meet all spacing requirements and would permit city-grade coverage to Three Rivers.

¹ "M.C. Vargas" is Mary Catherine Henderson Vargas, the daughter of Roy E. Henderson ("Henderson"). Henderson is licensee of Station KEMA(FM), Three Rivers, Texas, the community proposed by Vargas in her Counterproposal. F. W. Hannel & Associates, which prepared and filed the counterproposal for Vargas, serves as the engineer for Henderson's Fort Bend Broadcasting Company in MB Docket No. 02-235, a Michigan FM allocation proceeding involving the communities of Hart, Pentwater and Frankfort, among others. It appears that the Counterproposal is a "backfill" sponsored by Henderson to accommodate a move by KEMA to a more desirable city of license. See note 5, *infra*.

No. of Copies rec'd 07-4
List ABCDE

As shown below, removing both Channel 265A, as proposed in the *NPRM*, and Channel 292A from George West will not be inconsistent with allocation priorities.² The use of Channel 265 to upgrade Station KEPG also is consistent with the tentative finding in the *NPRM* that KEPG would use the available spectrum immediately, whereas no new stations will be established at George West in the foreseeable future on *any* of the vacant George West allotments due the current stay on auctions, not to mention the normal delays in obtaining a construction permit and then constructing a new station.

Moreover, multiple opportunities for new stations at George West exist even if Channel 292A were reallocated to Three Rivers. George West, population 2539, would retain vacant Channel 228C3. Further, the Commission is proposing to allocate Channel 250A to George West in MB Docket 03-86.³ This allocation could be considered a replacement for Channel 292A, if the Commission feels a replacement is necessary, and obviate the need for retaining Channel 265A at either George West or Three Rivers.

There are other opportunities as well. Should the Commission decline to adopt the Channel 250A proposal in MB Docket 03-86, Channel 273A could be allotted to George West. At pages 3-4 and the accompanying exhibits to Mr. Furr's attached statement, it is shown that Channel 273A could be allotted to George West by a shifting unoccupied, unapplied-for allotments at San Diego, Hebbbronville and Zapata, Texas.

It also should be recognized that because George West and Three Rivers are only 10 miles apart and in the same county, any radio station serving one of these communities will serve the other. Indeed, the map in Exhibit B to Mr. Furr's statement shows that if Channel 292A were

² By substituting a new channel at George West—and as shown herein, one or more is available—George West would continue to have a second local service, a factor that may be considered under “priority (4).” See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91-92 (1982).

³ See *Notice of Proposed Rule Making*, MB Docket No. 03-86 (released April 2, 2003).

allotted to Three Rivers, the new station, which would have to be located 11.6 kilometers southwest of the town,⁴ would provide city-grade service to George West. Thus, George West would have at least a new reception service, and most likely a new *de facto* transmission service, from a new station of Channel 292A if the channel were reassigned to Three Rivers to accommodate Vargas.

Given the fluid situation at George West, there is no reason to deny KEPG's upgrade request. As noted in the *NPRM*, Station KEPG would realize immediate gains in area and population coverage of 87 percent and 10 percent, respectively. As shown, there is a channel (292A) readily available to accommodate Vargas's perceived need for a new station at Three Rivers—or, as the case may be, the backfill facility Henderson needs to accommodate KEMA's exit from the community.⁵ Additionally, there are at least two opportunities, one proposed in a docketed proceeding, for replacement of one of George West's channels if two of them were removed as now suggested. And, even if no such replacement channel ultimately is assigned to George West (this may be the right choice given the community's small size and the existence of an unoccupied C3 allotment there), spacing constraints assure that Channel 292A at Three Rivers will provide city-grade service to nearby George West.

WHEREFORE, It is respectfully requested that (1) the Commission amend the FM Table Allotments as proposed in the *NPRM* and modify the license of Station KEPG, Victoria, Texas, to specify operations on Channel 265C3 in lieu of Channel 265A, and (2) make such

⁴ Allocation Statement, page 2.

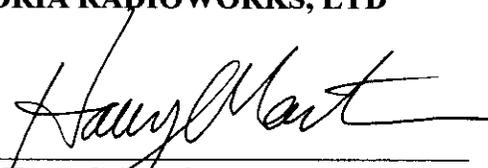
⁵ If Vargas really wants to serve Three Rivers rather than accommodate her father's need for a backfill allotment, she could have avoided the rule making process and simply applied for one of the multiple George West allocations, any of which, as shown, would permit her to cover both communities.

other changes in the Table of Allotments, such as those suggested above, as are deemed necessary to accommodate Vargas's counterproposal.

Respectfully submitted,

VICTORIA RADIOWORKS, LTD

By



Harry C. Martin
Its Attorney

Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209
703-812-0400

May 20, 2003

ALLOCATION STATEMENT

This statement is prepared on behalf of Victoria RadioWorks, Ltd. This is a proposal to provide an upgrade from Class A to Class C3 to KEPG, channel 265, Victoria, Texas, by deleting a third unused service in George West, Texas. A counterproposal to use 265A in Three Rivers, Texas was made. An alternate channel 292A move from George West, Texas is proposed here to resolve this conflict.

An alternate change of spectrum is suggested below if the Commission believes that 292A should be replaced in George West, Texas, in lieu of, or in addition to, the proposed allocation of channel 250A in MB Docket 03-86. This is not intended to introduce new communities into the pending KEPG upgrade proceeding, but only to advise the Commission of the availability of an additional and alternative channel that can be assigned to George West if the Commission deems that such an alternate assignment, now or in the future, would result in a better allotment arrangement for the communities involved.

All channels discussed below, except KEPG's channel 265, are allocated, but have no applications pending. The plan is summarized as follows:

<u>City</u>	<u>Has</u>	<u>Delete</u>	<u>Add</u>
Victoria, Texas	222A, 236C3, 254C1, 265A, 300C1	265A	265C3
George West, Texas	228C3, 292A, 265A	265A, 292A	273A
Three Rivers, Texas	233C2	-----	292A
San Diego, Texas	273A, 290C3	273A	232C3
Hebbronville, Texas	232A, 254A, 269A	232A	280A
Zapata, Texas	228C3, 274A, 280A	280A	267A

Three Rivers, Texas, Channel 292A

This channel is to be moved from George West, Texas instead of channel 265A as the counterproposal advocates. Channel 265A could then be deleted to accommodate KEPG's C3 upgrade on that channel. The proposed reference coordinates for Three Rivers Channel 292A are:

Latitude 28°21'58" North, Longitude 98°13'14" West

This reference site is 11.6 kilometers southwest of Three Rivers, Texas, where the entire city of Three Rivers will be served with the 70-dB μ contour as required by §73.315(a) and §73.315(b) of the FCC Rules as shown in Exhibit B. Exhibit A is an allocation study of this reference site as Class A. This demonstrates compliance with all requirements as set forth in §73.207 of the FCC Rules, except for the mutually exclusive allocation in George West. Using this reference coordinate, the coverage of this proposed site was calculated according to §73.313 of the Rules. The 60-dB μ (1 mV/m) contour will encompass 2,500 square kilometers of land area and 9,922 persons.

George West, Texas, Channel 273A

This channel is to be moved from San Diego, Texas and substitutes for the 292A, which would be used at Three Rivers, Texas, but only if the Commission decides George West needs a replacement for channel 292A and that, for unforeseen reasons, channel 250A is not assigned as is proposed in MB Docket No. 03-86. The proposed reference coordinates for George West channel 292A are:

Latitude 28°14'25" North, Longitude 98°13'51" West

This reference site is 5 kilometers southwest of George West, Texas, where the entire city of George West will be served with the 70-dB μ contour as required by §73.315(a) and §73.315(b)

of the FCC Rules as shown in Exhibit D. Exhibit C is an allocation study of this reference site as Class A. This demonstrates compliance with all requirements as set forth in §73.207 of the FCC Rules, except for the mutually exclusive allocation in San Diego. Using this reference coordinate, the coverage of this proposed site was calculated according to §73.313 of the Rules. The 60-dB μ (1 mV/m) contour will encompass 2,500 square kilometers of land area and 9,588 persons.

San Diego, Texas, Channel 232C3

This channel is to be moved from Hebronville, Texas and substitutes for the 272A for George West, Texas. The proposed reference coordinates for San Diego Channel 232C3 are:

Latitude 27°42'16" North, Longitude 98°24'27" West

This reference site is 17.9 kilometers west of San Diego, Texas, where the entire city of San Diego will be served with the 70-dB μ contour as required by §73.315(a) and §73.315(b) of the FCC Rules as shown in Exhibit F. Exhibit E is an allocation study of this reference site as Class C3. This demonstrates compliance with all requirements as set forth in §73.207 of the FCC Rules, except for the mutually exclusive allocation in Hebronville. Using this reference coordinate, the coverage of this proposed site was calculated according to §73.313 of the Rules. The 60-dB μ (1 mV/m) contour will encompass 4,727 square kilometers of land area and 40,901 persons.

Hebronville, Texas, Channel 280A

This channel is to be moved from Zapata, Texas and substitutes for the 232C3 for San Diego, Texas. The proposed reference coordinates for Hebronville Channel 280A are:

Latitude 27°18'23" North, Longitude 98°40'41" West

This reference site is center city Hebronville, Texas, where the entire city of Hebronville will

be served with the 70-dB μ contour as required by §73.315(a) and §73.315(b) of the FCC Rules as shown in Exhibit H. Exhibit G is an allocation study of this reference site as Class A. This demonstrates compliance with all requirements as set forth in §73.207 of the FCC Rules, except for the mutually exclusive allocation in San Diego. Using this reference coordinate, the coverage of this proposed site was calculated according to §73.313 of the Rules. The 60-dB μ (1 mV/m) contour will encompass 2,500 square kilometers of land area and 6,155 persons.

Zapata, Texas, Channel 267A

This channel is not allocated and substitutes for the 280A for Hebbronville, Texas. The proposed reference coordinates for Zapata Channel 267A are:

Latitude 26°55'40" North, Longitude 99°13'41" West

This reference site is 5 kilometers east of Zapata, Texas, where the entire city of George West will be served with the 70-dB μ contour as required by §73.315(a) and §73.315(b) of the FCC Rules as shown in Exhibit I. Exhibit I is an allocation study of this reference site as Class A. This demonstrates compliance with all requirements as set forth in §73.207 of the FCC Rules. Using this reference coordinate, the coverage of this proposed site was calculated according to §73.313 of the Rules. The 60-dB μ (1 mV/m) contour will encompass 2,500 square kilometers of land area and 11,735 persons.

I, John R. Furr, am a Communications Consultant whose qualifications are a matter of record with the Commission. To the best of my knowledge and belief, all statements made herein are true and correct.

May 20, 2003



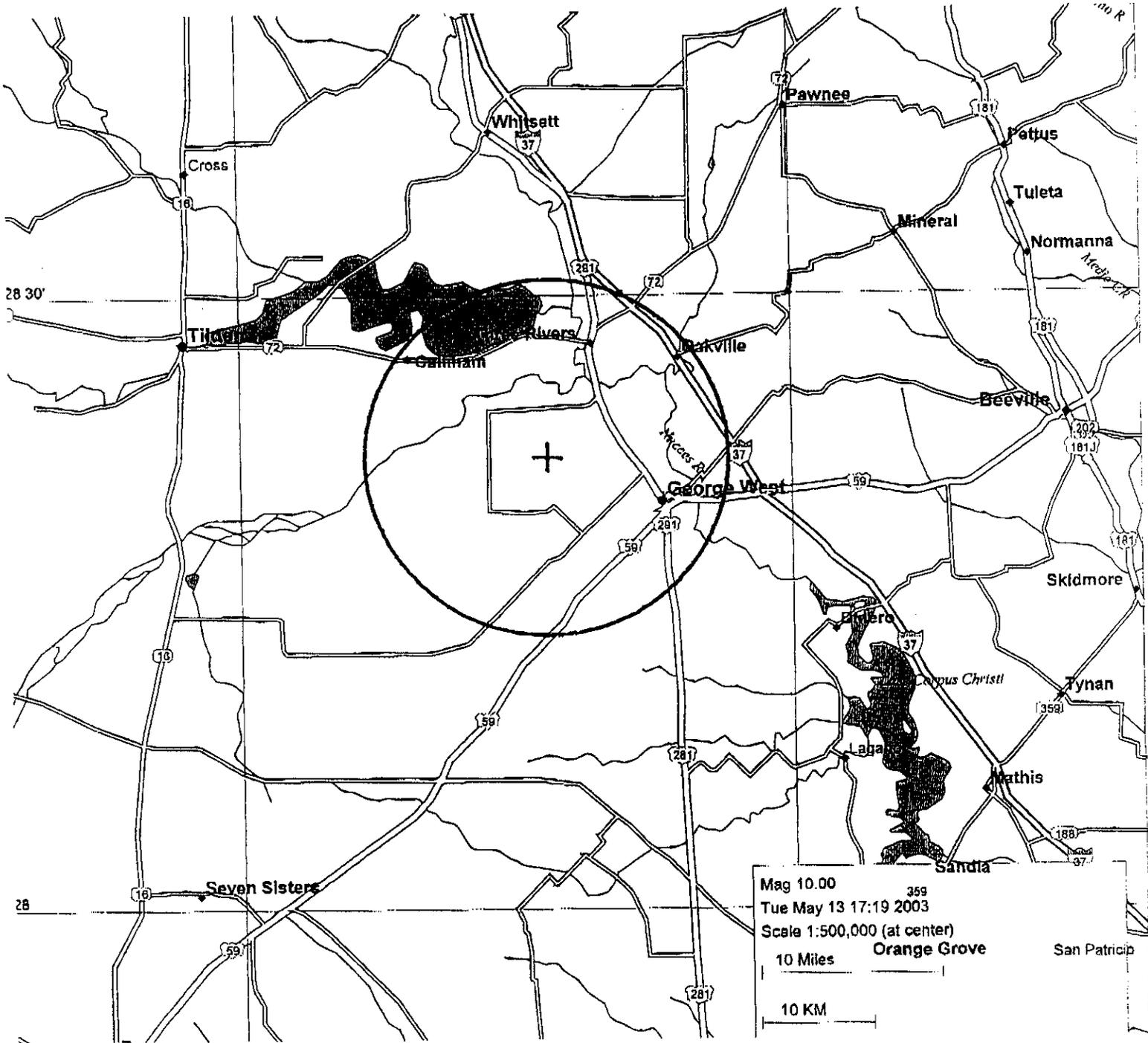
John R. Furr

Victoria RadioWorks Ltd. Victoria, Texas

Exhibit B – Three Rivers City Coverage

Victoria RadioWorks Ltd. Victoria, Texas

Exhibit B – Three Rivers City Coverage

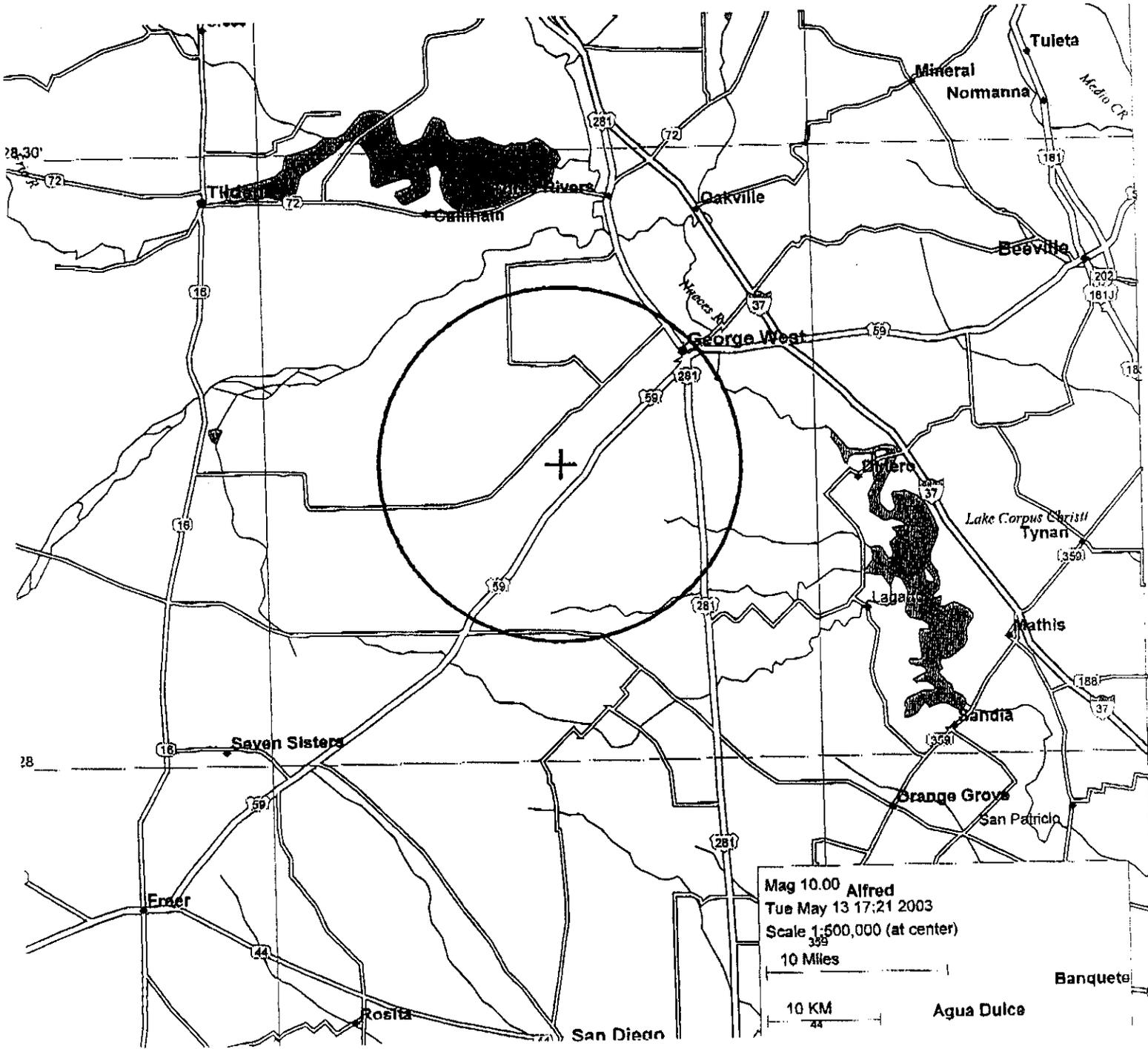


Victoria RadioWorks Ltd. Victoria, Texas

Exhibit D – George West City Coverage

Victoria RadioWorks Ltd. Victoria, Texas

Exhibit D – George West City Coverage

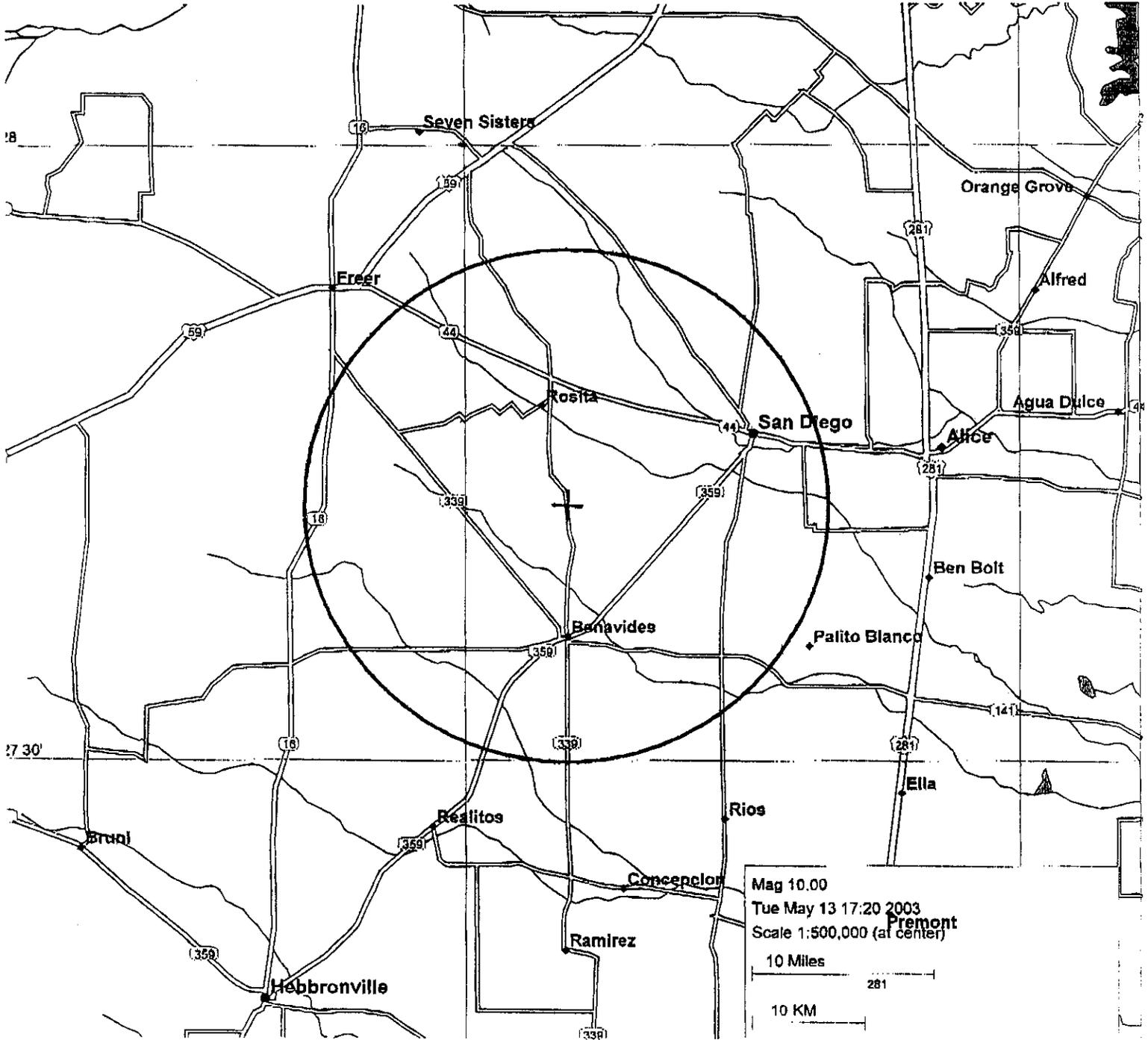


Victoria RadioWorks Ltd. Victoria, Texas

Exhibit F – San Diego City Coverage

Victoria RadioWorks Ltd. Victoria, Texas

Exhibit F – San Diego City Coverage

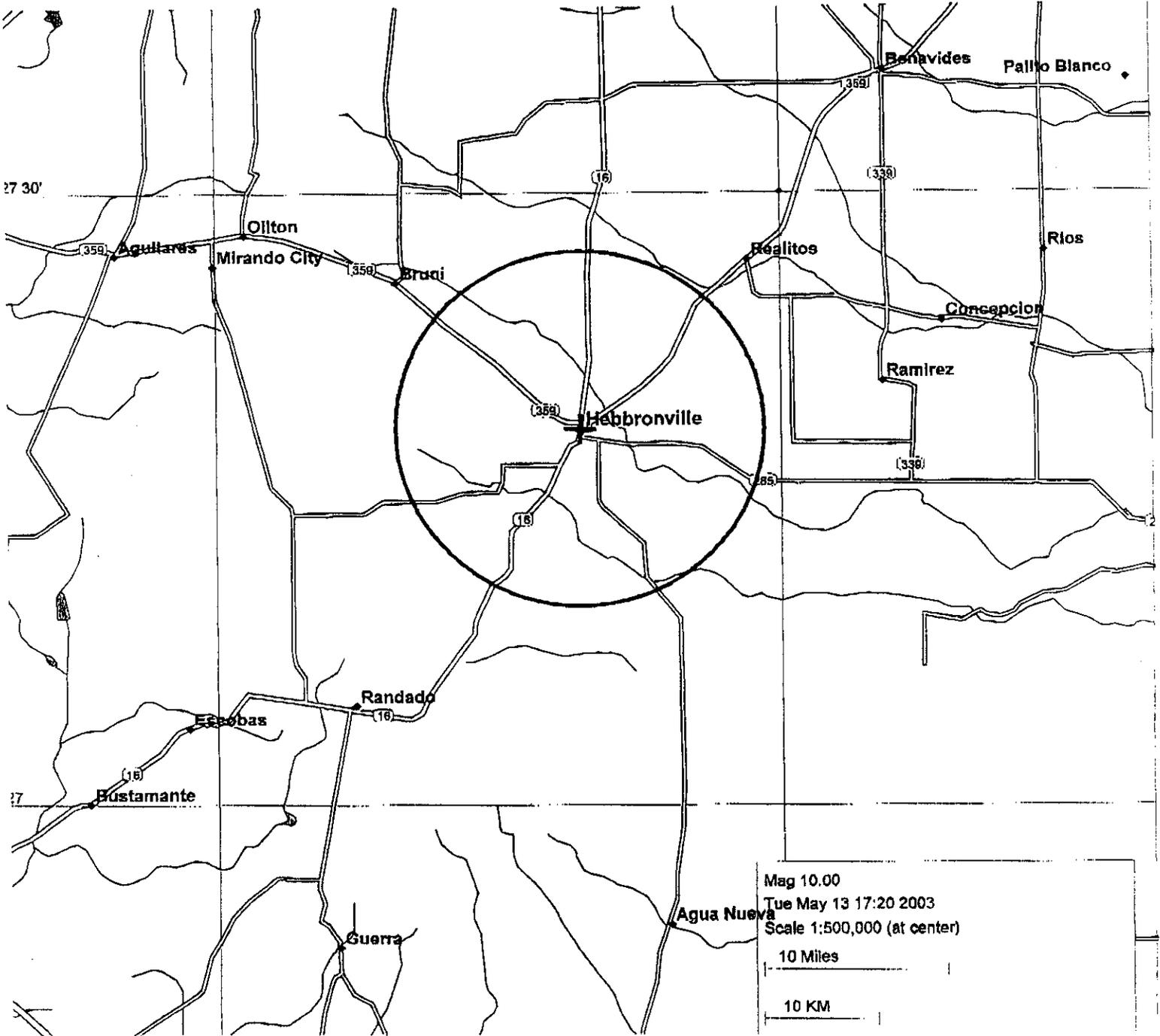


Victoria RadioWorks Ltd. Victoria, Texas

Exhibit H – Hebronville City Coverage

Victoria RadioWorks Ltd. Victoria, Texas

Exhibit H - Hebbronville City Coverage

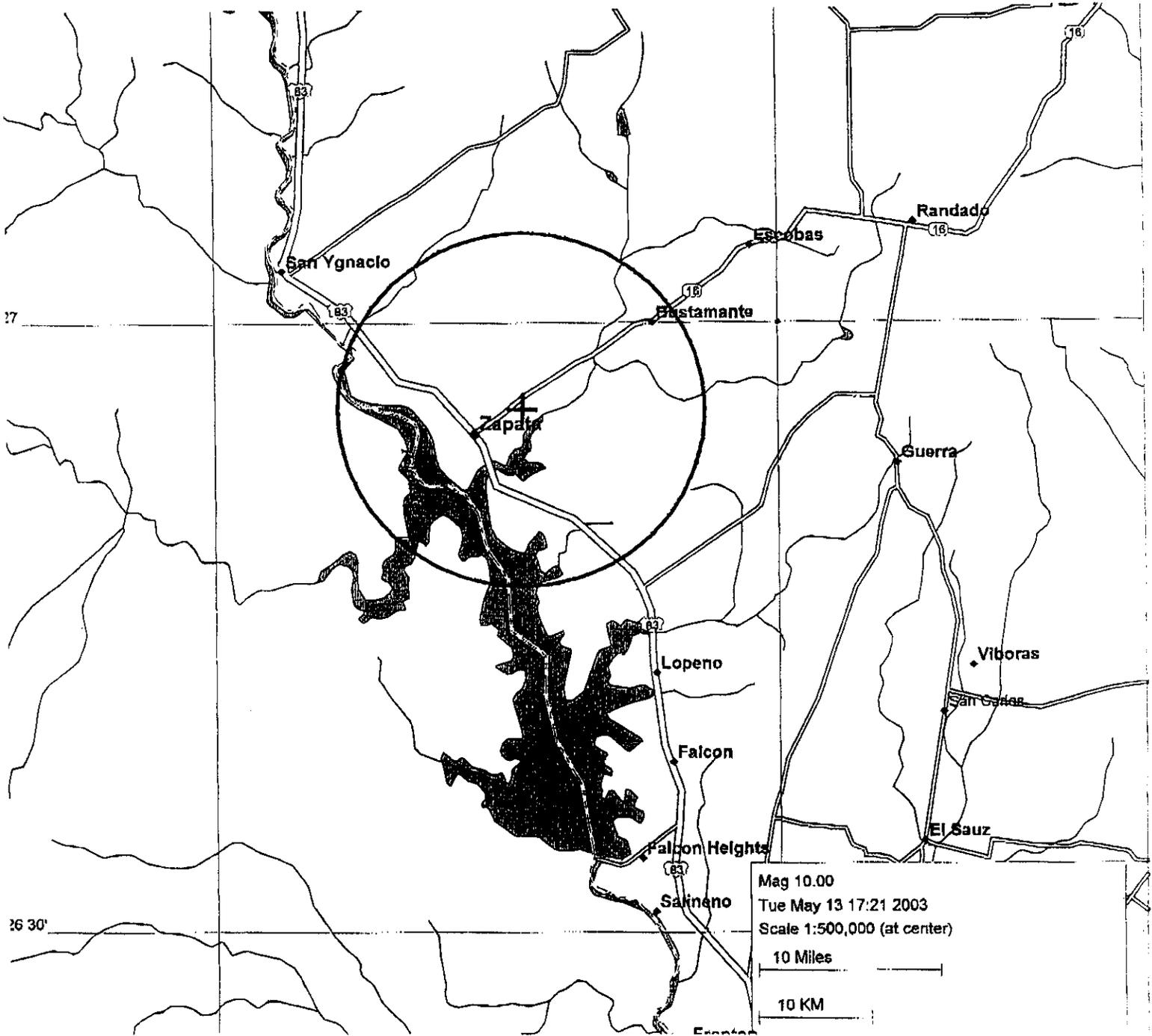


Victoria RadioWorks Ltd. Victoria, Texas

Exhibit I – Zapata City Coverage

Victoria RadioWorks Ltd. Victoria, Texas

Exhibit I – Zapata City Coverage

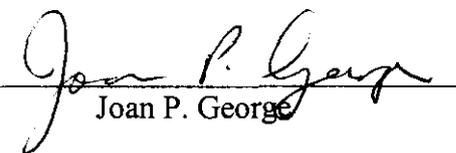


CERTIFICATE OF SERVICE

I, Joan P. George, a secretary in the law firm of Fletcher, Heald & Hildreth, do hereby certify that a true copy of the *Reply Comments of Victoria RadioWorks, Ltd.* was sent this 20th day of May, 2003, by hand where indicated and via United States First Class Mail, postage prepaid, to the following:

Sharon P. McDonald, Esq.*
Audio Division, Media Bureau
Federal Communications Commission
The Portals
445 12th Street, SW, Room 2-A226
Washington, D.C. 20554

F. W. Hannell, P. E.
F. W. Hannell & Associates
10733 East Butherus Drive
Scottsdale, Arizona 85255
Engineering Consultant to M. C. Vargas


Joan P. George

* By hand