

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, DC 20554

**ORIGINAL  
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MAY 24 2004

In the Matter of

Amendment of Section 73.202(b)	)	
Table of Allotments	)	MB Docket No. _____
FM Broadcast Stations	)	RM - _____
(Lake Charles, Louisiana and	)	
West Orange, Texas)	)	

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

To: Office of the Secretary  
 Attn: Assistant Chief, Audio Division  
 Media Bureau

**PETITION FOR RULE MAKING**

Apex Broadcasting, Inc. ("Apex"), licensee of KBXG(FM), Lake Charles, Louisiana, by its counsel, hereby submits this Petition for Rule Making, which proposes to delete Channel 258C0 from Lake Charles, Louisiana and allot Channel 258C0 to West Orange, Texas as that community's first local service. If this Petition is granted, Apex will file an application for Channel 258C0 at West Orange and construct the facilities as authorized. The following table summarizes the changes requested in this Petition:

City	Channel	
	Existing	Proposed
Lake Charles, Louisiana	241C1, 258C0, 277C2	241C1, 277C2
West Orange, Texas	---	258C0

**I. Technical Analysis**

1. As demonstrated in the Technical Exhibit, Channel 258C0 can be allotted to West Orange at coordinates 30-07-21 North Latitude, 93-36-21 West Longitude consistent with Section 73.207 of the Commission's Rules with respect to all existing and proposed domestic

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allotments and facilities. See Figure 1. A 70 dBu signal can be provided to West Orange from the proposed reference coordinates. See Figure 2. The relocation of KBXG from Lake Charles to West Orange will result in a predicted net gain in population of 273,454 persons within the KBXG 60 dBu contour. See Figure 3. The entire loss area will continue to receive at least 5 other aural services and will thus remain well served. See Figure 4.

## II. Change in Community of License

2. Apex desires to change the community of license of KBXG from Lake Charles to West Orange under the guidelines set forth in *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recons. granted in part*, 5 FCC Rcd 7094 (1990). There, the Commission stated that a station may change its community of license without subjecting the license to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission's allotment priorities. These criteria are met here. First, the proposed use of Channel 258C0 at West Orange is mutually exclusive with the current use of Channel 258C0 at Lake Charles. See Figure 1. Second, Lake Charles will not be deprived of its only local service because it will continue to be served 4 FM stations and 3 AM stations. Third, the provision of a first local service at West Orange (2000 U.S. Census population 4,111) under Priority 3 will result in a preferential arrangement of allotments over the retention of an eighth local service at Lake Charles (2000 U.S. Census population 71,757) under Priority 4. See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

3. West Orange is not located in an Urbanized Area. The proposed 70 dBu contour of KBXG will cover 100% of the Port Arthur and Beaumont Urbanized Areas. However, KBXG is currently located in the Lake Charles Urbanized Area. Therefore, this relocation does not implicate the Commission's policy regarding the migration of stations into urban areas. *See Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) ("*Headland*"); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*"). Nevertheless, a *Tuck* showing is provided. In making the determination whether to award an urbanized community a first local service preference, the Commission will consider (1) the extent to which the station will provide service to the entire Urbanized Area, (2) the relative populations and proximity of the suburban and central city, and, most importantly, (3) the independence of the suburban community. *Tuck*, 3 FCC Rcd at 5377-78. In this case, from the proposed transmitter site, KBXG would place a 70 dBu contour over 100% of the Port Arthur and Beaumont Urbanized Areas. The population of West Orange (2000 U.S. Census 4,111) is 7.1% of that of Port Arthur (2000 U.S. Census 57,755) and 3.6% of that of Beaumont (2000 U.S. Census 113,866). West Orange is located 53.05 kilometers from Port Arthur and 27.79 kilometers from Beaumont. These figures are similar to those of other suburban communities granted a first local preference. *See, e.g., Old Fort, Fletcher, and Asheville, North Carolina; Surgoinsville, Tennessee, and Augusta, Georgia*, 18 FCC Rcd 12181, 12182 (2003) (Fletcher's population is 6.1% of that of Asheville, and Fletcher is located 17 kilometers from Asheville); *Malvern and Bryant, Arkansas*, 14 FCC Rcd 3576, 3577 (1999) (Bryant's population is 3% of that of Little Rock, and Bryant is located 20 miles from Little Rock). Nevertheless, the Commission has repeatedly stated that these factors are less important than evidence of independence. *See Headland*, 10 FCC Rcd at 10355. The following

analysis of the eight *Tuck* factors demonstrates the independence of West Orange from Port Arthur and Beaumont.

(1) ***Extent to which the residents of West Orange work in West Orange.***

According to 2000 Census figures, 263 of the 1,625 employed individuals in West Orange, or 16.2%, work at their place of residence. See Exhibit 2. This percentage compares favorably with other independent communities. See, e.g., *Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 (2001), application for review pending (11.3% of working-age residents worked in community); *Coolidge and Gilbert, Arizona*, 11 FCC Rcd 3610 (1996) (13% of Gilbert's working population actually worked in Gilbert).

(2) ***Newspapers and other media that cover West Orange's local needs and interests.***

*The Orange Leader* is a daily publication that is delivered to subscribers, and can also be located on the internet at <[www.orangeleader.com](http://www.orangeleader.com)>. *The Orange Leader* has served Orange County since 1875, and while it is a county paper, it provides the community of West Orange with local coverage. Therefore, the residents of West Orange do not have to rely on the media in Port Arthur or Beaumont. See Exhibit 2.

(3) ***Community leaders and residents perceive West Orange as being separate from Port Arthur and Beaumont.***

West Orange is located in Orange County, Texas. The town plat for West Orange was filed in 1902 and a substantial community subsequently developed due to West Orange's proximity to the industrial facilities at Port Vernon. West Orange was incorporated in 1954 and is currently administered by a five member city council, headed by a mayor. The mayor of West Orange, Roy McDonald, recently attended the opening of a Goody's Clothing Store in West Orange. Mayor

McDonald was quoted as saying that he “is proud they have given 60 people new jobs.”  
*See Exhibit 2.*

(4) ***West Orange has its own local government and elected officials.*** West Orange operates independently of any other government and is administered by a mayor and city council. Pursuant to the city charter, the city council shall enact local legislation, adopt budgets, determine policies, employ the city officials, execute the laws, and administer the government of the city. The mayor is the chief executive officer of West Orange, and is responsible for ensuring that the laws and ordinances of the city are enforced. In addition to the mayor and city council, the officials of West Orange include the city attorney, the chief of police, the city secretary, the municipal judge, the public works director, the building inspector, the fire marshall, and the fire chief. *See Exhibit 2.*

West Orange has a municipal court, which has jurisdiction within the corporate limits in all criminal cases arising under ordinances of the city, and has concurrent jurisdiction with any justice of the peace in any precinct in which the city is situated in all criminal cases arising under the criminal laws of the state. *See Exhibit 2.*

(5) ***West Orange has one zip code.*** The zip code assigned to West Orange is 77630, and the U.S. Postal Service operates an office at 3109 Edgar Brown Drive in West Orange. The listings for West Orange are contained in the Greater Orange-Bridge City phone book. The residents of West Orange can use this phone book and do not have to rely on the Port Arthur or Beaumont phone books. *See Exhibit 2.*

(6) ***West Orange has its own commercial establishments and health facilities.*** West Orange is home to a variety of businesses and commercial establishments. The Greater Orange Area Chamber of Commerce provides a listing of

businesses located in West Orange and serving the community of West Orange. These businesses include, Amtex Bankshares, Beaty Insurance Agency, N&T Construction, Texas Polymer Service, Trampolines USA, West Orange Mobile Home Park, Orange County Ice, Toni's Nails, Marine Grocery, Western Avenue Automotive, and the Appliance Store.<sup>1</sup> See Exhibit 2.

Health care and dental services are provided to the community of West Orange by a number of sole practitioners. West Orange is also home to a number of religious organizations, including the Christian Church of West Orange, the First Baptist Church of West Orange, the Calvary Baptist Church of West Orange, and the St. Johns United Methodist Church. See Exhibit 2.

**(7) West Orange is a separate and distinct advertising market from Port Arthur and Beaumont.** *The Orange Leader* provides the businesses of West Orange with a place to advertise to the residents of West Orange without relying on the Port Arthur or Beaumont advertising markets. See Exhibit 2.

**(8) West Orange has its own schools, police protection and fire protection.** The city of West Orange encompasses two school districts. The West Orange-Cove Independent School District serves the residents who live on the eastern side of West Orange. The Bridge City Independent School District serves the residents who live on the western side of West Orange. The West Orange-Cove Independent School District administers one high school, one middle school and three elementary schools. The West Orange-Stark High School football team is one of the most successful teams in Texas. It

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<sup>1</sup> West Orange shares a zip code with Orange, Texas. Therefore many of the businesses listed in this section have an "Orange" mailing address. However, research of the location of these businesses indicate that they are located in West Orange

has the highest winning percentage of all division 4A schools in Texas. The community of West Orange is very proud of their football team and they have a website devoted to the team. *See Exhibit 2.*

The West Orange Police Department is managed by the chief of police, Michael S. Stelly. The police department was established by the city charter and the department is dedicated to making the community of West Orange a better place to live. The West Orange Fire Department, also established by the city charter, is administered by the fire marshall, Lewis Hogan. The fire marshall is responsible for the overall planning of fire prevention in the city. *See Exhibit 2.*

4. West Orange is clearly independent of Port Arthur and Beaumont and therefore deserving of a first local service. As demonstrated above, West Orange satisfies all of the independent community indicia required by *Tuck*.

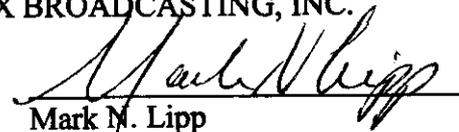
### **III. CONCLUSION**

For the foregoing reasons the Commission should delete Channel 258C0 at Lake Charles, Louisiana and allot Channel 258C0 at West Orange, Texas as that community's first local service. Apex reiterates that if the Commission allots Channel 258C0 at West Orange as that community's first local service, it will file an application and will construct the facilities as authorized. The Commission should promptly issue a Notice of Proposed Rule Making as described herein.

Respectfully submitted,

APEX BROADCASTING, INC.

By:



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Its Counsel

May 24, 2004

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**TECHNICAL EXHIBIT**

**Engineering Statement  
In Support of a  
Petition for Rule Making  
Channel 258C0 (KBXG), West Orange, Texas**

**General**

Apex Broadcasting, Inc. ("Apex") hereby petitions the Commission to delete channel 258C1 at Lake Charles, Louisiana and allocate channel 258C0 at West Orange, Texas as that community's first local service. No other spectrum modifications are necessary to effectuate this change.

The proposed amendment to the Table of Allotments is as follows:

<u>City</u>	<u>Current</u>	<u>Proposed</u>
Lake Charles, LA	241C1, 258C0, 277C2	241C1, 277C2
West Orange, TX	-----	258C0

**Exhibits Explained**

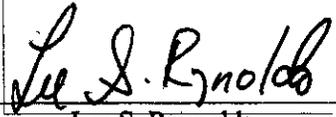
Exhibit E, Figure 1 is an allocation study showing that the proposed channel 258C0 at West Orange, Texas is fully spaced. Exhibit E, Figure 2 shows that the proposed allocation will provide 100% coverage of the new community of license (West Orange) from the proposed KBXG allocation coordinates. It is these coordinates that Apex chooses to use for the purposes of this petition for rule making.

Exhibit E, Figure 3 is a gain/loss study for the proposed deletion at Lake Charles and the addition at West Orange. The end result will be a gain of service to 273,454 persons and an increase in coverage area of 1,605 square kilometers. Exhibit E, Figure 4 is a remaining services study that demonstrates no under-served areas are created by the proposed modification of KBXG.

**Conclusion**

The instant petition proposes to provide West Orange, Texas (population 4,111 according to the 2000 US Census) its first local service. Lake Charles will remain well served by other commercial FM stations.

For Apex:

A handwritten signature in black ink, reading "Lee S. Reynolds". The signature is written in a cursive style with a large initial "L".

Lee S. Reynolds

Reynolds Technical Associates  
12585 Old Highway 280 East, Suite 102  
Chelsea, AL 35043  
205.618.2020

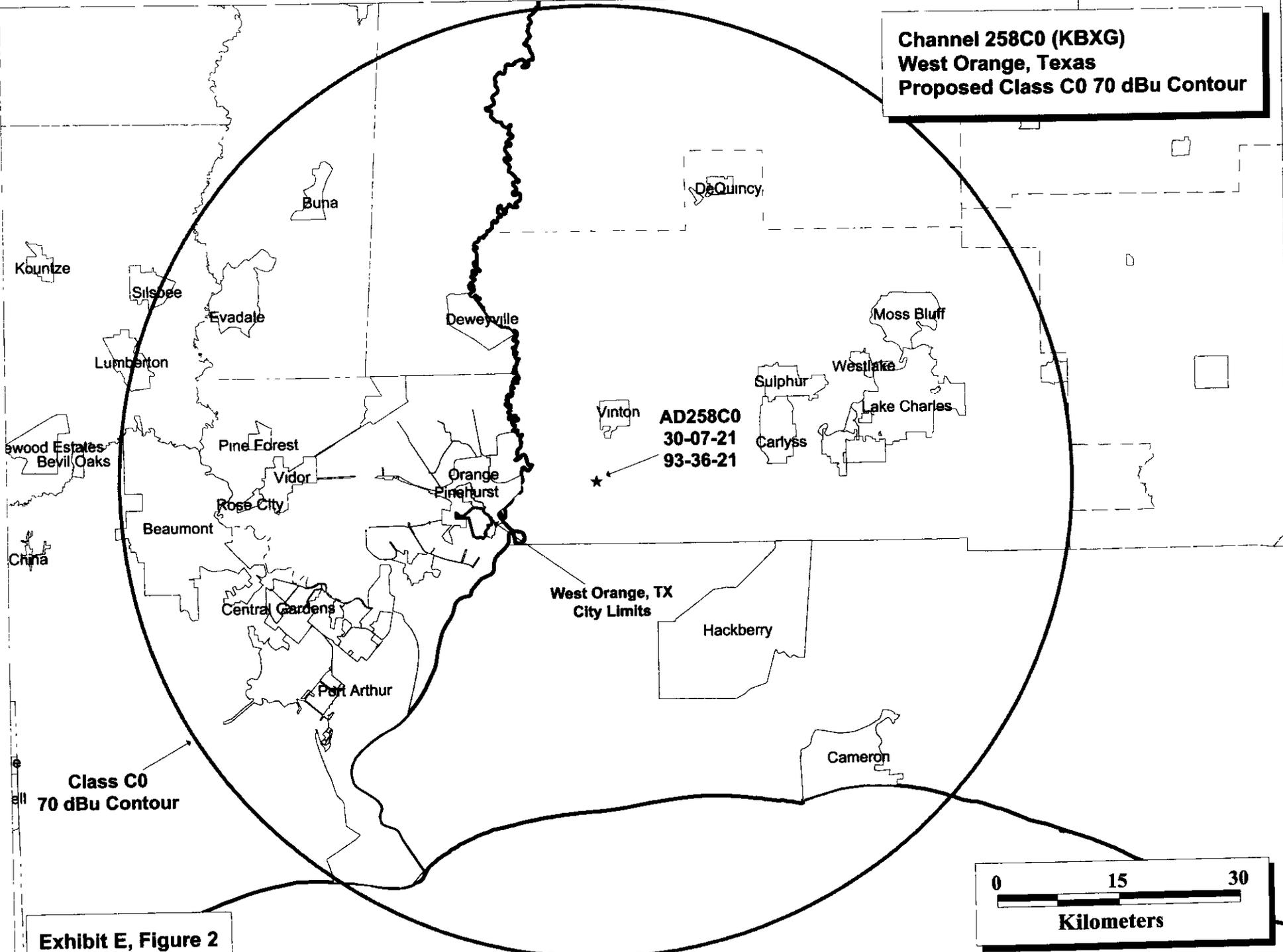
**Engineering Statement**

**In Support of a  
Petition for Rule Making  
Channel 258C0 (KBXG), West Orange, Texas**

**Channel 258C0 Allocation Study**

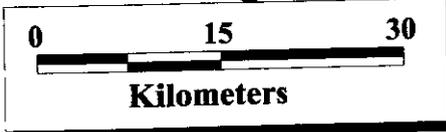
REFERENCE								DISPLAY DATES
30 07 21 N			CLASS = C0					DATA 05-15-04
93 36 21 W			Current Spacings					SEARCH 05-20-04
----- Channel 258 - 99.5 MHz -----								
Call	Channel	Location		Dist	Azi	FCC	Margin	
-----								
	<b>Community of West Orange</b>		<b>TX</b>	<b>15.22</b>	<b>252.3</b>			
	Reference coordinates:							
	North Latitude: 30-04-51							
	West Longitude: 93-45-23							
<b>KBXG.A</b>	<b>APP-N</b>	<b>258C0</b>	<b>Lake Charles</b>	<b>LA</b>	<b>18.84</b>	<b>8.6</b>	<b>270.0</b>	<b>-251.16</b>
<b>KBXG</b>	<b>LIC</b>	<b>258C1</b>	<b>Lake Charles</b>	<b>LA</b>	<b>65.66</b>	<b>61.8</b>	<b>259.0</b>	<b>-193.34</b>
Of no concern:								
Coordinates used by KBXG								
ALLO	VAC	257A	Corrigan	TX	152.00	310.0	152.0	0.00
KSHN	LIC	260C2	Liberty	TX	89.14	265.1	89.0	0.14
KUST	LIC-N	259C3	Huntsville	TX	190.85	290.3	163.0	27.85
ALLO	VAC	256A	Pineland	TX	118.18	344.0	86.0	32.18
ALLO	RSV	259A	Willis	TX	185.76	285.1	152.0	33.76
KUST.C	CP	259A	Willis	TX	188.62	281.6	152.0	36.62
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**Channel 258C0 (KBXG)  
West Orange, Texas  
Proposed Class C0 70 dBu Contour**



**AD258C0  
30-07-21  
93-36-21**

**West Orange, TX  
City Limits**



**Exhibit E, Figure 2**

**Class C0  
70 dBu Contour**

Gain Area = 8,956 sq km  
Loss Area = 7,351 sq km  
Pop. Gain = 415,999  
Pop. Loss = 142,545

Channel 258C0 at  
West Orange, Texas (KBXG)  
Gain/Loss Study

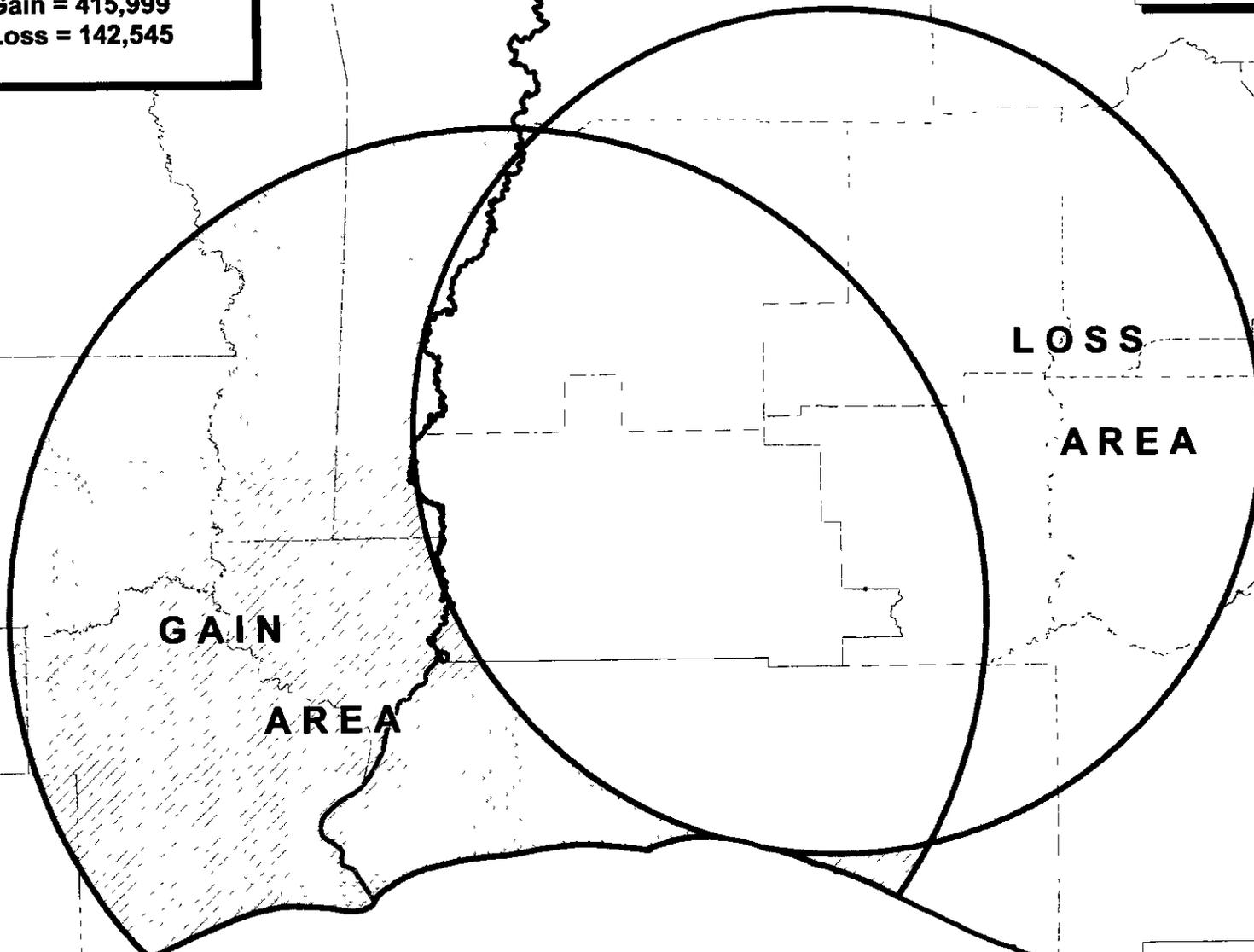
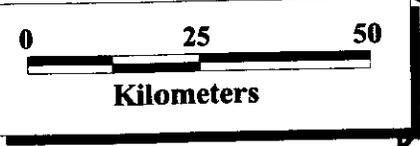
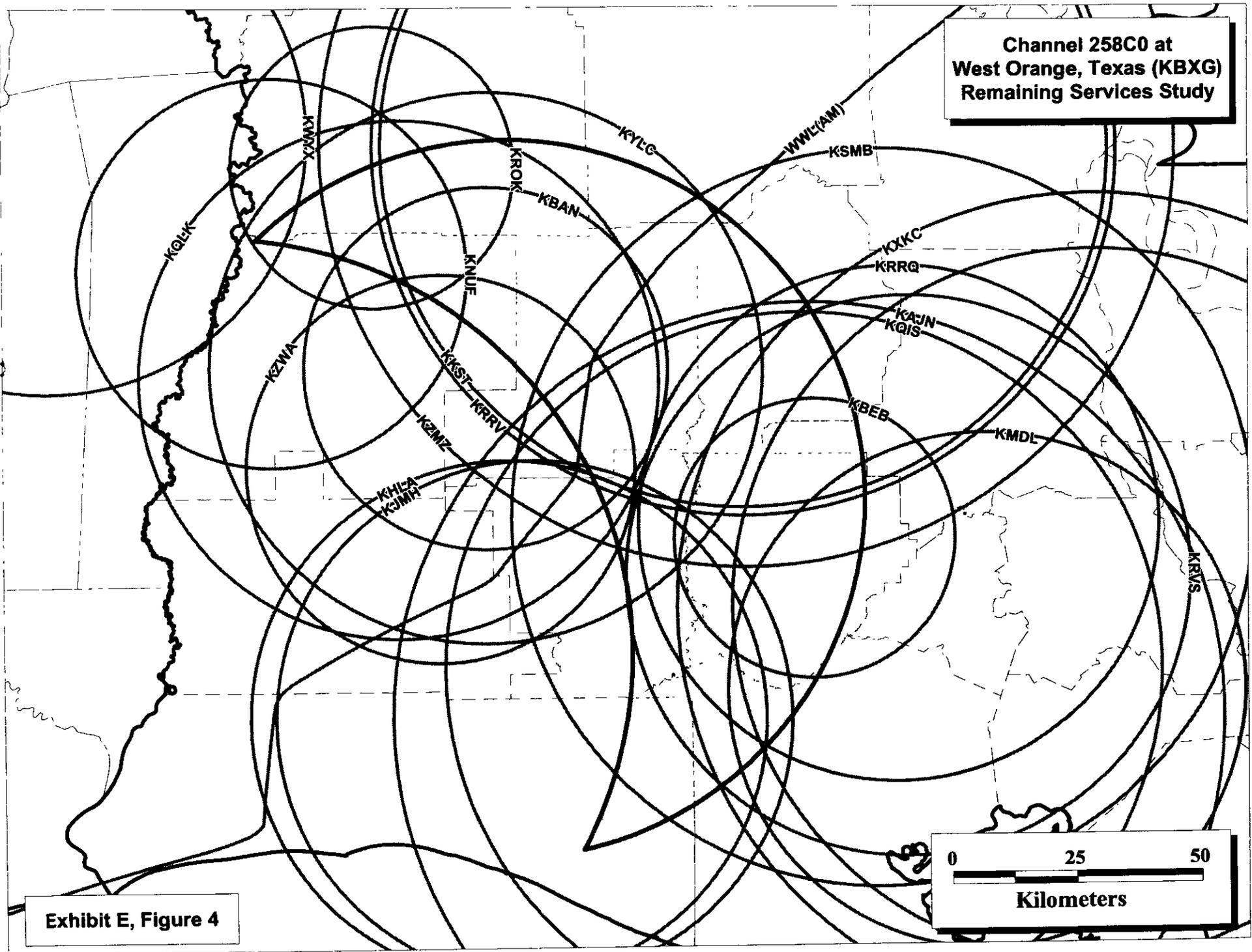


Exhibit E, Figure 3



**Channel 25C0 at  
West Orange, Texas (KBXG)  
Remaining Services Study**



**Exhibit E, Figure 4**

