

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

FILED/ACCEPTED

JAN 19 2007

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
Amendment of Section 73.202(b))	
Table of Allotments)	MB Docket No. 05-263
FM Broadcast Stations)	RM-11269
(Grants and Church Rock, New Mexico))	

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

AMENDED COUNTERPROPOSAL

College Creek Broadcasting, Inc. ("College Creek"),¹ Desert Sky Media, LLC,² and Smoke & Mirrors, LLC (together, the "Joint Parties"), by their counsel, hereby amend their Counterproposal filed in the above captioned proceeding.³ This amendment will remove the majority of the changes requested in the Joint Parties' Counterproposal, which will permit the FCC to grant both the Joint Parties' Counterproposal and Millennium Media Inc.'s -- the original petitioner's -- proposal in this proceeding in a timely manner. In support hereof, the Joint Parties state as follows:

1. The Joint Parties desire to amend their Counterproposal by substituting Channel 255B1 (in lieu of Channel 265B) for vacant Channel 280B at Essex, California. As

¹ College Creek Broadcasting, Inc. has consummated the assignment of KCLS(FM) Ely, NV, and the New CP for Channel 278C2 at Teec Nos Pos, Arizona to College Creek Media, LLC.

² Desert Sky Media, LLC, has consummated the assignment of KVGS(FM) Laughlin, NV, to RBG Las Vegas Licenses, LLC.

³ The Joint Parties filed (i) a Counterproposal in this proceeding on October 17, 2005, (ii) Reply Comments and Errata on November 1, 2005, and (iii) a Request to Correct Coordinates on February 10, 2006. In their Reply Comments and Errata, the Joint Parties amended their Counterproposal to (i) allot Channel 293C1 at Fredonia (instead of Channel 247C1), (ii) remove the proposal to allot Channel 237C at First Mesa, Arizona, and (iii) remove the proposal to allot Channel 278C2 at Teec Nos Pos, Arizona. These modifications removed the conflict with Petitioner's proposal to allot Channel 279C at Church Rock, New Mexico.

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demonstrated in Exhibit E, Figure 13-A, Channel 255B1 can be allotted at Essex consistent with the Commission's spacing rules. A 70 dBu signal can be provided to Essex from the proposed reference coordinates. *See* Exhibit E, Figure 14-A. The downgrade of the vacant channel at Essex will create an insignificant amount of gray and white area. *See* Exhibit E, Figures 15-A & 16-A. However, there are no persons in the gray area and only 6 persons in the white area. Thus, this loss of potential service is considered *de minimis* especially considering that the Joint Parties' amended Counterproposal will provide (i) a first aural reception service to a "white" areas with a net population of 642 people, (ii) a second aural reception service to "gray" areas with a net population of 310 people, and (iii) an additional aural service to a net population of 258,381 persons.⁴

2. The Joint Parties recognize they are proposing the downgrade of a vacant allotment, however, this is permitted pursuant to the FCC's *Tiptonville* policy.⁵ In *Tiptonville*, the Media Bureau granted a proposal that involved the downgrade of a vacant allotment at Tiptonville, Tennessee from Channel 267C3 to Channel 247A. In doing so, it held that a vacant allotment can be downgraded in a rule making if (1) the proposal at issue serves the public interest pursuant to the FCC's allotment priorities,⁶ and (2) an interest in the downgraded channel is expressed.⁷

⁴ *See Wallace, Idaho and Big Fork, Montana*, Memorandum Opinion and Order, 19 FCC Rcd 15267, ¶5 (2004).

⁵ *See Bethel Springs, Martin, Tiptonville, Trenton, and South Fulton, Tennessee*, Report and Order, 17 FCC Rcd 14472 (MB 2002) ("*Tiptonville*").

⁶ *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

⁷ *Tiptonville*, 17 FCC Rcd at ¶¶ 13-15. In addition, even if a party opposes the downgrade or explicitly indicates that it has an interest in applying for and building Channel 280B at Essex, the FCC must still favor the Joint Parties' amended Counterproposal pursuant to *Tiptonville*. This is because in *Tiptonville* the Media Bureau held that the downgrade of a vacant allotment only triggers Priority 4. Thus, the public interest benefits -- service to white and gray areas -- of the Joint Parties' amended Counterproposal (Priority 1 and Priority 2) outweigh the downgrade of the Essex vacant allotment (Priority 4).

3. These criteria are met here. First, the Joint Parties' amended Counterproposal to allot Channel 256C at Ely, Nevada will provide (i) a first aural reception service to a "white" area of 15,943 square kilometers with a population of 802 people, and (ii) a second aural reception service to a "gray" area of 5,279 square kilometers with a population of 395 people. Thus, the Ely allotment furthers Priority 1 and Priority 2 of the FCC's allotment priorities. Second, College Creek hereby expresses an interest in applying for vacant Channel 255B1 at Essex, California and also building the facilities if its application is granted.

4. As a result of the Joint Parties' amendment -- substituting Channel 255B1 (in lieu of Channel 265B) for vacant Channel 280B at Essex, California -- 17 of the 22 remaining changes proposed by the Joint Parties' Counterproposal, that was necessitated by the allotment of Channel 265B at Essex, can be deleted. The only parts of the Joint Parties' Counterproposal that remain are as follows:

- Allot Channel 256C at Ely, Nevada.
- Delete Channel 255C at Pioche, Nevada, allot Channel 255C at Moapa Valley, Nevada, and modify the license of Station KBZB(FM) accordingly.
- Delete Channel 269C3 at Ely, Nevada, allot Channel 268C at Pioche, Nevada, and modify the license of Station KCLS(FM) accordingly.
- Substitute Channel 280B for Channel 255B at Essex, California, and issue an Order to Show Cause to KHWY, Inc., the licensee of Station KHWY to show why the station's channel should not be changed at its current site.
- Substitute Channel 255B1 for vacant Channel 280B at Essex, California.

The Joint Parties' amended Counterproposal results in the following amendments to the FM Table of Allotments are requested (listed alphabetically):

Community	Channel	
	Existing	Proposed
Essex, CA	255B, 280B	255B1, 280B
Ely, NV	224C2, 269C3	224C2, 256C
Moapa Valley, NV	224C, 284C1	224C, 255C, 284C1
Pioche, NV	255C	268C

WHEREFORE, the Joint Parties' respectfully request that the FCC accept the Joint Parties' amended Counterproposal that will result in (i) a first aural reception service to a "white" area of 15,943 square kilometers with a net population of 642 people, (ii) a second aural reception service to a "gray" area of 5,279 square kilometers with a net population of 310 people, and (iii) an additional aural service to a net population of 258,381 persons.

<p>SMOKE & MIRRORS, LLC</p> <p>By: <u>Robert L. Olender</u> Robert L. Olender (by MNL) Koerner & Olender, PC 11913 Grey Hollow Court North Bethesda, MD 20852 301-468-3336</p> <p>Its Counsel</p> <p>January 19, 2007</p>	<p>Respectfully submitted,</p> <p>COLLEGE CREEK BROADCASTING, INC.</p> <p>DESERT SKY MEDIA, LLC</p> <p>By: <u>Mark N. Lipp</u> Mark N. Lipp⁸ Scott Woodworth Wiley Rein & Fielding LLP 1776 K Street NW Washington, DC 20006 202-719-7503</p> <p>Their Counsel</p>
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⁸ Please note the change in address for the Joint Parties' counsel for the purpose of service.

ENGINEERING STATEMENT

In Support of an
Amendment to a
Pending
Counterproposal

KBZB(FM) PIOCHE, NV
KCLS(FM) ELY, NV
The Joint Parties

INTRODUCTION

This engineering statement is prepared in support of an amendment to the pending counterproposal to MB Docket 05-263 (hereinafter referred to as the “NPRM”) filed by College Creek Broadcasting, licensee of KCLS(FM) Ely, NV, and permittee of channel 237C1 Teec Nos Pos, AZ (“College Creek”); Desert Sky Media, LLC, licensee of KVG(S)FM Laughlin, NV; Route 66 Broadcasting, LLC, licensee of KZKE(FM) channel 277C3 Seligman, AZ; Smoke and Mirrors, LLC, licensee of KRRK(FM) Lake Havasu City, AZ and KFTT (FM) channel 276C3 Bagdad, AZ (the “Counterproposal”). In the instant statement these parties will be referred to as the Joint Parties or the Parties. The Joint Parties submit that the public interest will be served by implementing their amended scenario. Following the spectrum modifications advanced by the Joint Parties, a first aural service will be provided to a net total of 642 persons (white area) and a net 310 persons will be provided a second primary service (gray area). The amendment is also being advanced to significantly simplify the Joint Parties proposal.

Prior to filing the instant amendment, the Joint Parties proposed to modify the spectrum in the following manner:

- (1) Add channel 256C to Ely as that community’s first wide area station;

(2) delete channel 255C at Pioche and allot MX channel 255C at Moapa Valley, NV for use by KBZB;

(3) delete channel 269A at Ely, NV and allocate channel 268C at Pioche, NV for use by KCLS (service replacement);

(4) substitute channel 280B for channel 255B at the licensed site of KHWY Essex, CA;

(5) substitute channel 265B for VAC channel 280B at Essex, CA;

(6) delete channel 266C0 at Lake Havasu City, AZ and allocate channel 266C to Spring Valley, AZ for use by KRRK;

(7) substitute channel 240C1 for channel 266C1 at the licensed site of KNRJ(FM) Payson, AZ;

(8) delete channel 239C0 at Cottonwood, AZ and allocate MX channel 239C3 at Seligman, AZ for use by KZGL(FM);

(9) substitute KWKM's channel 239C St. Johns, AZ with channel 251C;

(10) substitute channel 277A for VAC channel 267A at Ash Fork, AZ;

(11) delete channel 277C3 (CP) at Seligman, AZ and allocate channel 276C0 at Desert Hills, AZ for use by KZKE(FM);

(12) substitute channel 299A for channel 276C3 at Bagdad, AZ for use by KFTT(FM);

(13) delete channel 300C at Laughlin, NV, and allocate channel 300C at Meadview, AZ, for use by KVGS(FM);

(14) delete channel 285A at Cal-Nev-Ari, NV, and allocate channel 285C2 at Laughlin, NV for use by the CP;

(15) substitute channel 267C3 for VAC channel 285C3 at Peach Springs, AZ;

(16) substitute channel 267C3 for VAC channel 275C3 at Quartzsite, AZ;

(17) delete channel 276C at Hurricane and allocate channel 276C at Kanab using the community reference coordinates;

(18) delete channel 260C at St. George, UT and allocate 260C to Hurricane, UT for use by KONY as a replacement service that requires no technical modifications;

(19) substitute channel 239C1 for channel 278C1 using the vacant channel allotment reference at Fredonia, AZ;

(20) substitute channel 228C3 for VAC channel 269C3 at Paulden, AZ;

(21) substitute channel 290A for VAC channel 269C3 using the community reference coordinates at Bagdad, AZ; and

(22) substitute channel 251C2 for VAC channel 290C2 using a modified site at Quartzsite, AZ.

As part of the instant Amendment, the Joint Parties request that, in order for KHWY Essex, CA, to change channels from 255B to 280B, that the Vacant Allotment also at Essex, California, be changed from 280B to 255B1 (instead of 265B) with a site modification. As a result of this channel substitution and site modification for the Vacant Allotment at Essex, numerous other modifications to the FM Table of Allotments (modifications 6 through 22 listed above) are no longer required in order to further the Commission's allotment priorities. This simple amendment also significantly simplifies the Joint Parties' Counterproposal and eliminates the conflict with the original petition in the instant NPRM.

The following discussion describes each proposed modification as instantly amended in sequential order.

1) **Add New Wide Area Service Channel 256C at Ely, NV** The Joint Parties proposed to add channel 256C at Ely as that community's first wide area service. College Creek is simultaneously filing an expression of interest in the allotment of this channel. The allotment of channel 256C can be made using the US Census Bureau's coordinates for the community of Ely as allotment reference. It requires only one sub move, the deletion of channel 255C at Pioche. The distance between channel 256C at Ely and the licensed site of KBZB is 152.48 kilometers, while 241.0 kilometers are required to be fully spaced. This creates a prohibited short space of 88.52 kilometers (licensed site) or 39.30 kilometers (CP site). The Joint Parties propose to eliminate this prohibited short space by deleting channel 255C at Pioche and allotting it to Moapa Valley, NV as that community's second local service. However, presently the only local service at Pioche is KBZB. The Joint Parties propose to continue providing uninterrupted service to Pioche by deleting channel 269C3 at Ely and allotting MX channel 268C at Pioche for use by KCLS.

a) **KBZB – Proposed channel 255C Moapa Valley, NV** (Current CH 255C, Pioche, NV)

The modification of KBZB to operate on channel 255C at Moapa Valley, NV creates a short space of 49.29 kilometers to KHWY Essex, CA, on channel 255B. The amount of the short space is large enough that an alternate site on the part of either station will not correct the prohibited short space. Therefore, an alternate channel for KHWY is proposed on 280B.

- i) **KCLS - Proposed channel 268C Pioche, NV** (Current CH 269A Ely, NV)
REPLACEMENT SERVICE The Joint Parties propose to provide a licensed, seamless aural service by deleting channel 269C3 at Ely, NV, and allocating channel 268C to Pioche for use by KCLS. The distance between channel 269C3 at Ely and channel 268C at Pioche is 154.43 kilometers, while 176.0 kilometers are required to be fully spaced. This creates a prohibited short space of 21.57 kilometers. Therefore, the two sites are mutually exclusive. This allotment will offer uninterrupted service to the residents of Pioche and the KBZB service area. The KCLS 60 dBu contour will exceed the current KBZB 60 dBu so no listeners in the primary service area will ever be without aural service. The proposed KCLS 60 dBu will be larger in service area since KBZB operates as a substandard class C, and KCLS will utilize the current KBZB licensed site (though with a maximum class C facility).
- ii) **KHWY – Proposed channel 280B Essex, CA** (Current CH 255B Essex, CA)
KHWY currently operates on channel 255B licensed to Essex, CA, and has a Construction Permit to also operate on 255B at a nearby site. The allotment of channel 255C at Moapa Valley is 224.71 kilometers from the KHWY licensed site, while 274 kilometers are required. This creates a prohibited short space of 49.29 kilometers. The Joint Parties propose to eliminate this short space by substituting channel 280B at the licensed site of KHWY. The following sub change is required: the channel of the Vacant Allotment on 280B at Essex must be changed to 255B1.

- (1) **VAC 280B – Proposed channel 255B1 Essex, CA** (Current channel 280B Essex, CA). VAC channel 280B is currently allotted to Essex and has been vacant for ten years. The substitution of channel 280B for channel 255B for KHWY has a distance of 22.84 kilometers, while 241.0 kilometers are required to be fully spaced. This creates a short space of 218.16 kilometers. The Joint Parties propose to eliminate this short space by changing Vacant Channel 280B at Essex to channel 255B1 and modify its site to coordinates N34-38-52, W115-28-24. The modification of channel 255B1 at Essex conflicts with no other stations.

AMENDED EXHIBITS EXPLAINED

Exhibit E, Figures 1 through 12 as submitted in the Joint Parties' Counterproposal remain applicable to the amended scenario. Exhibit E, Figures 13 through 66 from the Joint Parties' Counterproposal may be discarded and replaced with the following figures:

VAC Ch 280B Essex, CA

Exhibit E, Figure 13-A attached hereto is an amended allocations study showing that channel 280B can be changed to channel 255B1 at Essex, CA, with a site modification to coordinates N34-38-52, W115-28-24. This substitution is necessary to eliminate short spacing to channel 280B at Essex being substituted herein for use by KHWY. Figure 14-A is a 70 dBu contour map for a class B1. It shows that the allotment is in compliance with §73.315 concerning city grade service to the entire community. Figure 15-A is a gain/loss area map with population counts from the US Census Bureau 2000 census. Figure 16-A is a remaining services map showing that some white and gray area is created by the substitution and subsequent site modification for

channel 255B1 at Essex. No population resides in the gray area being created; however, a population of six persons resides in the new White Area being created - a number which has been historically considered by the Commission to be *de minimis*. More importantly, the additions of channel 256C at Ely and Channel 268C at Pioche provide first aural reception service to net 648 persons – a number which far outweighs the 6 persons who will be otherwise deprived of a first aural reception service near Essex at some point in the future.

Under the amended Proposal, the net number of total persons receiving new service is 258,381 persons calculated as follows:

- When Channel 256C is allotted at Ely, Nevada, 9,543 persons gain new service of which 645 persons gain a first aural reception service under Priority 1 and 157 persons gain a second aural reception service under Priority 2.
- When Channel 255C is deleted at Pioche, Nevada, and subsequently allotted at Moapa Valley, Nevada, for KBZB(FM)'s use, a net total 261,396 persons gain service, of which 3 persons gain a first aural reception service under Priority 1 and 153 gain a second aural reception service under Priority 2.
- When KCLS(FM), Channel 269C3 is deleted at Ely, Nevada, and subsequently allotted on Channel 268C at Pioche, Nevada, a net total 1834 persons lose service under Priority 4.
- When Channel 280B is substituted for Channel 255B at Essex, California, for KHWY(FM)'s use, there is no change in population served.
- When Channel 255B1 is substituted for vacant Channel 280B at Essex, California, 10,724 persons lose service under Priority 4.

CONCLUSION

This engineering statement includes studies clearly documenting that the Counterproposal provides a superior method for obtaining maximum utilization of the spectrum while satisfying all of the current Commission rules concerning FM spectrum modifications. The Amended Counterproposal can be implemented with a minimum of spectrum interruption.

Respectfully Submitted,
COLLEGE CREEK BROADCASTING, INC.
DESERT SKY MEDIA, LLC

A handwritten signature in black ink, appearing to read "Kevin Terry", written over a horizontal line.

Kevin Terry, Engineer
Desert Sky Media, LLC
College Creek Broadcasting, Inc.

Exhibit E, Figure 13-A Channel 255B1 Essex, CA
 Allotment Spacings Study

REFERENCE
 34 38 52 N.
 115 28 24 W.

CLASS = B1 Int = B1
 Current Spacings

DISPLAY DATES
 DATA 1-17-07
 SEARCH 1-17-07

----- Channel 255 - 98.9 MHz -----

Call	Channel	Location		Azi	Dist	FCC	Margin
RDEL	DEL 255B	Essex	CA	54.9	45.18	211.0	-165.82
Of no Concern: Deletion of Channel 255B at Essex Proposed in original Counterproposal.							
KHWY	LIC 255B	Essex	CA	54.9	45.18	211.0	-165.82
Of no Concern: Substitute Channel 280B proposed in original Counterproposal.							
RADD	ADD 255C	Moapa Valley	NV	19.9	260.20	259.0	1.20
KGGI	LIC 256B	Riverside	CA	253.7	159.89	145.0	14.89
AL0149	AL 255B	Cuervos	BN	165.4	231.60	211.0	20.60
KLUC-FM	LIC 253C	Las Vegas	NV	15.5	156.79	105.0	51.79
KWXY-FM	LIC 253B	Cathedral City	CA	225.8	124.08	71.0	53.08
KMRJ	LIC 258A	Rancho Mirage	CA	218.9	110.65	48.0	62.65
KBZB.C	CP 255C	Pioche	NV	15.9	325.10	259.0	66.10
XHMOREFM	--- 255B	Tijuana	BN	212.5	277.31	211.0	66.31
XHMOREFM	OPE 255B	Tijuana	BN	212.5	277.31	211.0	66.31
DKVEZ.	APP 257C2	Parker	AZ	113.9	127.61	56.0	71.61
DKVEZ	LIC 257C2	Parker	AZ	116.4	129.87	56.0	73.87

Exhibit E, Figure 14-A

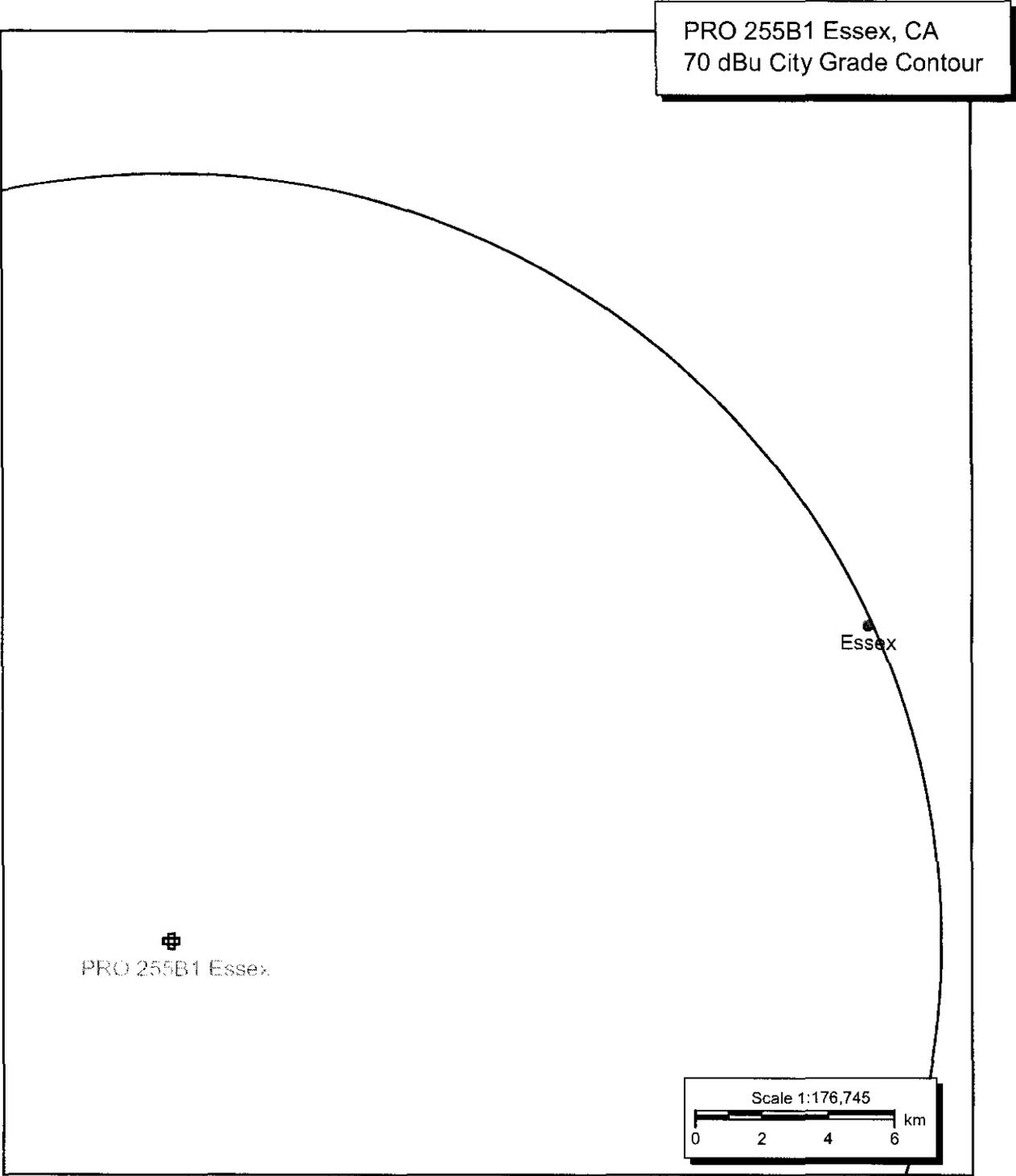


Exhibit E, Figure 14-A (cont'd)

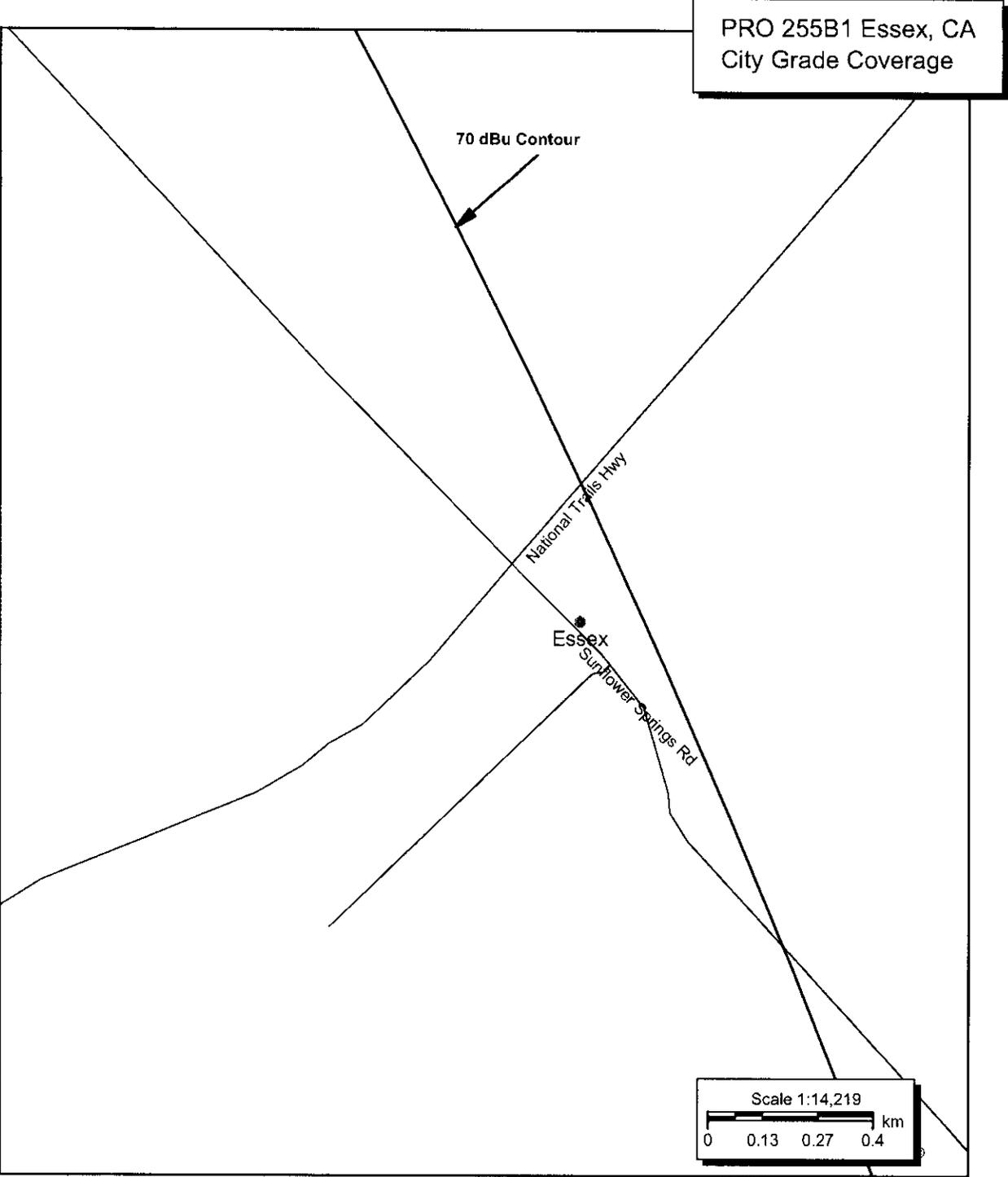
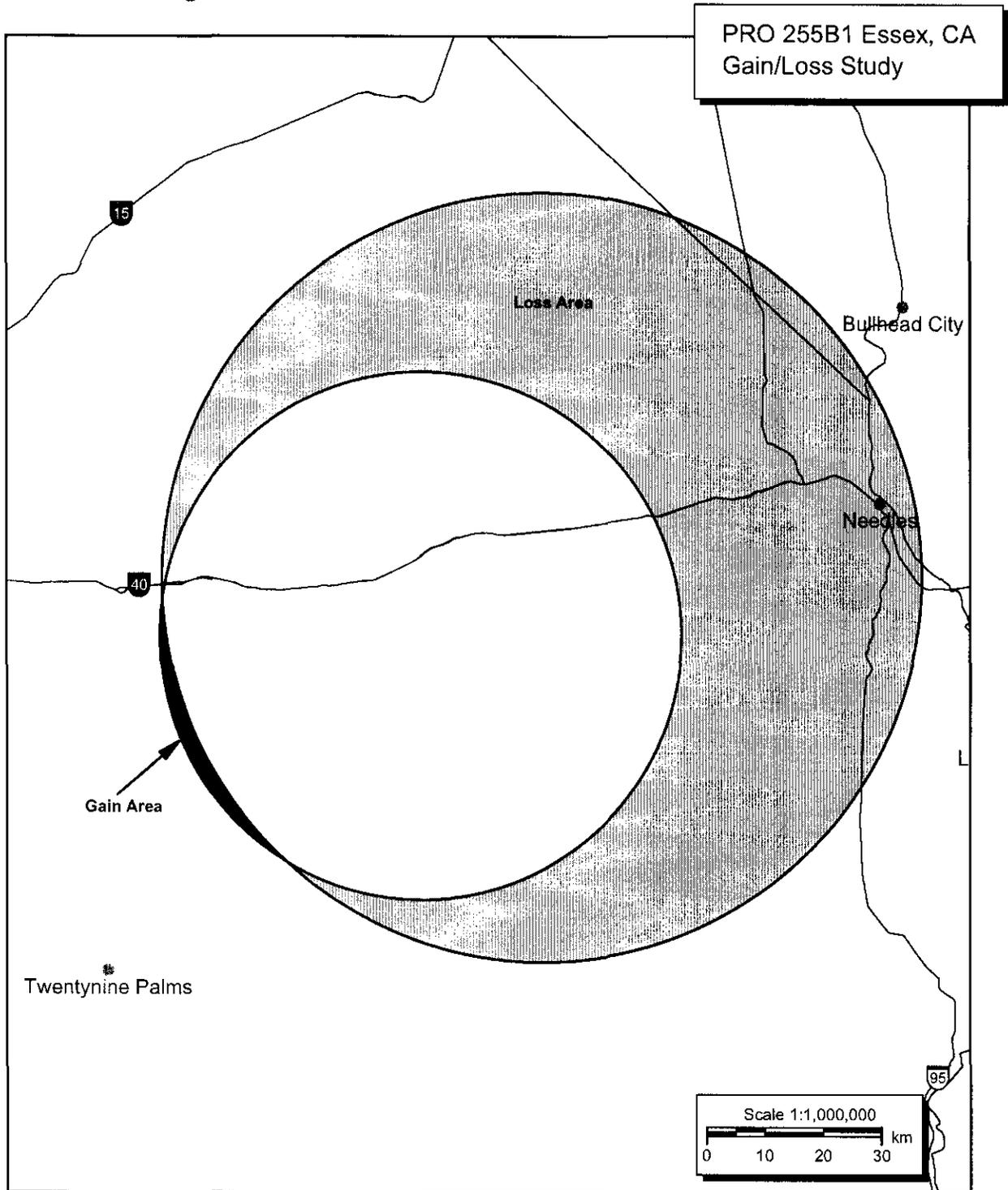
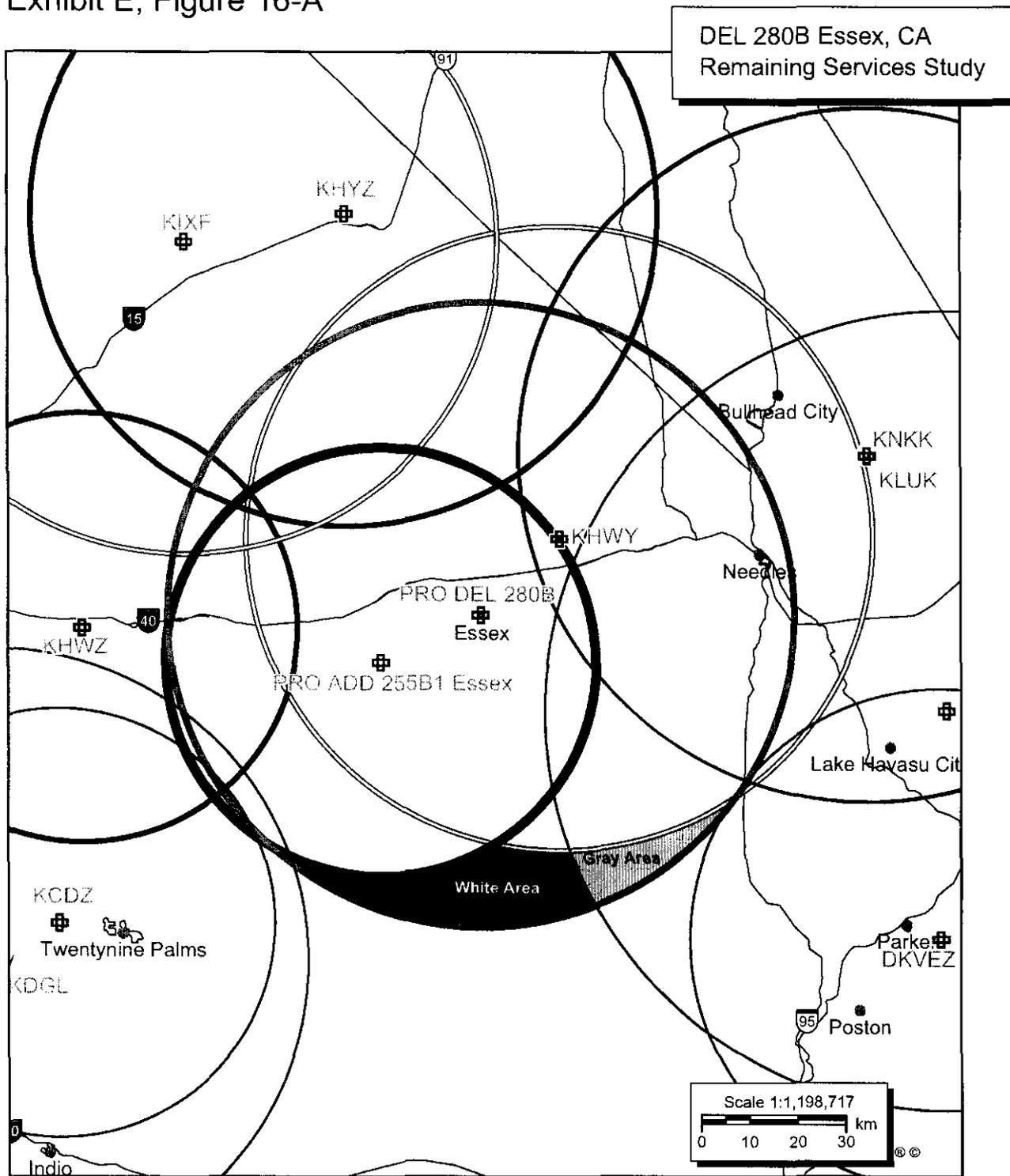


Exhibit E, Figure 15-A



Population in Gain Area: 0
Population in Loss Area: 10,724
Size of Gain Area: 88 sq km
Size of Loss Area: 7129 sq km

Exhibit E, Figure 16-A



Population Report:

Persons Living in New White Area (shaded black): 6
Persons Living in New Gray Area (shaded gray): 0

CERTIFICATE OF SERVICE

I, Faye Jones, in the law firm of Wiley Rein & Fielding LLP, do hereby certify that I have on this 19th day of January, 2007, unless otherwise noted, caused to be mailed by first class mail, postage prepaid, copies of the foregoing “**Amended Counterproposal**” to the following:

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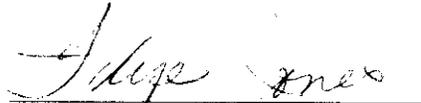
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