

ORIGINAL
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FEB -7 2007

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

| | | |
|------------------------------------|---|----------------------|
| Amendment of Section 73.202(b) |) | |
| Table of Allotments |) | MB Docket No. 05-245 |
| FM Broadcast Stations |) | RM - 11264 |
| (Sierra Vista, Tanque Verde, Vail, |) | RM - 11357 |
| Animas, Corona de Tucson |) | |
| and Virden Arizona, and Lordsburg, |) | |
| New Mexico) |) | |

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

REPLY COMMENTS

Cochise Broadcasting, LLC ("Cochise"), licensee of Station KKYZ(FM), Corona de Tucson, Arizona,¹ and permittee of a new station at Lordsburg, New Mexico,² and Desert West Air Ranchers Corporation ("Desert West"), licensee of Station KRDX(FM), Vail, Arizona³ (together the "Joint Parties"), by their counsel, hereby submit these Reply Comments.⁴ The purpose of these Reply Comments is to rebut the legal and factual allegations made by CCR-Sierra Vista IV, LLC ("CCR") in its October 4, 2005 "Reply Comments and Opposition to Counterproposal" (the "Opposition"). In its Opposition, CCR attempts to (i) correct deficiencies in its Petition for Rule Making (filed on June 8, 2005), and (ii) identify deficiencies in the Joint Parties' Counterproposal (filed on September 19, 2005). However, as demonstrated herein and

¹ See Report and Order in MB Docket No. 03-141, 19 FCC Rcd 10997 (2004).

² BNPH-20050609ABD.

³ See Report and Order in MM Docket No. 00-31, 16 FCC Rcd 20515 (2001).

⁴ Public Notice of the Joint Parties' Counterproposal was released on January 23, 2007. See Report No. 2803. Thus, these Reply Comments are timely.

in the Joint Parties' Counterproposal, CCR's allegations are factually inaccurate and legally without foundation. Thus, the Commission must deny CCR's Petition for Rule Making and grant the Joint Parties' Counterproposal. In support hereof, the Joint Parties state as follows:

I. CCR'S PETITION FOR RULE MAKING

1. In its Petition for Rule Making, CCR proposed to (i) delete Channel 265A at Sierra Vista, Arizona (ii) allot Channel 265A at Tanque Verde, Arizona, and (iii) modify the license of Station KZMK(FM) accordingly. However, in their Counterproposal, the Joint Parties revealed a number of deficiencies with CCR's proposal. First, the Joint Parties demonstrated, that the proposal submitted by CCR is technically unacceptable because it fails to provide a viable allotment site. Second, the Joint Parties demonstrated that CCR's proposal creates a significant amount of grey area, which detracts from the public interest benefits of its proposal. Finally, the Joint Parties noted that CCR failed to provide a *Tuck* showing to demonstrate that Tanque Verde is independent of the Tucson Urbanized Area.⁵

2. In its Opposition, CCR attempts (but fails) to correct these defects. In regard to the availability of a viable allotment site, CCR essentially concedes the unavailability of its original proposed site in the Pusch Ridge Wilderness Area by proposing to relocate to another location, this time in the Coronado National Forest where CCR believes that the Forest Service will allow the construction of a new tower. It bases its belief on the fact that there are two electronic tower sites with several TV facilities. CCR claims that a large area exists for a properly spaced location in the Coronado National Forest and the "Commission routinely allows

⁵ While the Commission may permit CCR to rely on the *Tuck* showing submitted by the Joint Parties in their Counterproposal rather than require CCR to submit its own showing, it should not evaluate the CCR proposal without holding it to the same *Tuck* standards in view of the fact that most of Tanque Verde is indeed located within the Tucson Urbanized Area. Irrespective of whether the proposed 70 dBu contour (here KZMK's) will cover over 50 percent of the an urbanized area (here Tucson), the Commission requires a *Tuck* showing if any portion of the proposed community (here Tanque Verde) is located in an urbanized area. *See Malvern and Bryant, Arkansas*, 14 FCC Red 3576 ¶10 (Mass Med. Bur. 1999).

use of allocation points in National Forests for proposed transmitter sites.”⁶ No cases law is cited for this proposition.

3. To the contrary, in *Boulder Town, Levan, Mount Pleasant and Richfield, Utah*, the Bureau stated, “[n]either party mentioned that its transmitter location would be in the National Forest or that it received permission from the National Forest Service to use a site in a National Forest. We do not presume that authority to build there would be granted.”⁷ Here, it has been 18 months since the CCR Petition was filed and 15 months since CCR relocated its site to the Coronado National Forest. That should have been more than enough time to obtain permission to construct a tower. It is not enough to overcome the presumption to state merely that permission has been granted in the past. Further, the two sites identified in CCR’s Opposition have existed for decades and to the Joint Parties’ knowledge, no new sites have been approved since then. In addition, those sites are a great distance from the location specified by CCR and presumably that is why CCR did not propose to locate at either site. Nor is it clear that permission would be granted for any additional antennas on existing towers by the Forest Service even if the towers have room which, of course, has not been offered by CCR as part of the record. Thus, CCR’s proposal is still technically unacceptable because it fails to provide a viable allotment site.

4. In regard to the significant amount of grey area created by CCR’s proposal, CCR’s Opposition incorrectly tried to rebut the figures provided by the Joint Parties. The Joint Parties demonstrated that the gain/loss analysis included in CCR’s Petition for Rule Making included many impermissible stations in its loss-area study. When those stations are properly excluded, the Joint Parties demonstrated that CCR’s proposal created a large “grey area” of

⁶ See Opposition at p. 2.

⁷ 21 FCC Rcd 4580, 4581 (Med. Bur. 2006).

7,485 persons (*i.e.*, an area that receives only one aural service). More specifically, CCR incorrectly included (i) KKYZ(FM)'s facility at Sierra Vista and (ii) a number of Mexican stations in its loss area. However, KKYZ(FM) is only operating at Sierra Vista pursuant to an "implied STA"⁸ and thus will not provide permanent service to the loss area. While CCR cites the Communications Act of 1934, as amended, and claims that "foreign stations are to be included in the determination of existing service,"⁹ this is an inaccurate reading of the law. Foreign stations are included for ownership purposes, but not for gain-loss purposes. In fact the cases cited by CCR are ownership cases.¹⁰ In this regard the case of *Nogales, Vail and Patagonia, Arizona*, cited previously by the Joint Parties is on point. There the petitioner (like CCR here) attempted to make the same argument and include a number of Mexican stations in the loss area study.¹¹ However, the FCC expressly held that "the Commission does not consider foreign stations when determining reception service in allotment proceedings."¹² Thus, it is clear that CCR cannot include Mexican stations in its loss area and (irrespective of whether KKYZ(FM)'s facility at Sierra Vista is included), CCR's proposal creates a large grey area (and, as will be shown below, a "white area" as well) that significantly detracts from the public interest benefits of its proposal.

⁸ KKYZ(FM) is operating pursuant to an "implied STA" at Sierra Vista because the Commission has already (i) deleted Channel 269A at Sierra Vista, (ii) allotted Channel 267C3 at Corona de Tucson, and (iii) modified the license of KKYZ(FM) accordingly. See *Sierra Vista and Corona de Tucson, Arizona*, 19 FCC Rcd 10997, MB Docket No. 03-141, (Med. Bur. 2004). This rule making is final and KKYZ(FM) must cease operation at Sierra Vista by the expiration of its construction permit or sooner. See *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, 14 FCC Rcd 17525, n.55 (1999); *1998 Biennial Regulatory Review -Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 13 FCC Rcd 14849, 14855 n.22 (1998).

⁹ See Opposition at p. 3.

¹⁰ See *id.* at p. 3, note 4.

¹¹ 16 FCC Rcd 20515, ¶2 (Mass Med. Bur. 2001).

¹² *Id.*

5. The Joint Parties note at the outset that recent FCC decisions make it unclear what is to be included for the purpose of determining service to gain/loss areas. In *Eldorado, Mason, Mertzson and Fort Stockton, Texas*,¹³ and *Sells, Arizona*,¹⁴ the Bureau held that unbuilt construction permits and vacant allotments will not be considered when determining the remaining services in a loss area when an existing station is involved. Thus, based on these recent cases it appears that the Commission is saying that since there is a loss of actual service to listeners, potential service is not to be considered in the analysis. Under this reasoning, it would also be improper to evaluate existing stations which cover part of the loss area by using the maximum facilities for their class of channel as prescribed in *Greenup, Kentucky and Athens, Ohio*.¹⁵ Using vacant allotments, unbuilt permits and maximum facilities represents potential service under the reasoning used by the Commission in the recent cases. The Joint Parties have attempted to calculate the remaining services without potential service remaining in the KKYZ(FM) loss area. Due to the lack of clarity in these recent decisions it was necessary to base the analysis on different factors. These methodology and the results they produce are detailed in the Engineering Exhibit attached hereto. Under Scenario #1, where vacant allotments and unbuilt permits are not considered but the existing KZMK facility is evaluated under the traditional *Greenup* guidelines, a white area of 186 people in an area of 101 sq. km. and a grey area of 12,231 persons in a 590 sq. km. area is created. In Scenario #2, where stations covering the loss area are evaluated by their existing facilities and KZMK's existing contour is based on its existing 3 kW authorization, a grey area is created with 9,420 persons in a 141 sq. km. area. In Scenario #3, actual facilities are also used based on the Sec. 73.313 methodology rather than

¹³ DA 07-61 (Med. Bur. 2007)

¹⁴ 19 FCC Rcd 22459 (Med. Bur. 2004), *pet. for recon. pending*.

¹⁵ 6 FCC Rcd 1493 (1991)

“flat earth” and the result is a grey area created with 10,588 persons in an area of 394 sq. km. Thus, even though it would be beneficial if the Commission were to clarify the method to be used to replace the former *Greenup* method, it is irrelevant in this case. Regardless of the method, the grey area created is substantial and decisionally significant whether or not the white area is recognized as well.

II. THE JOINT PARTIES’ COUNTERPROPOSAL

6. The Joint Parties’ propose to (i) delete Channel 267C3 at Corona de Tucson, Arizona and allot Channel 267C3 to Tanque Verde, Arizona as that community’s first local service and modify the license of Station KKYZ(FM) accordingly; (ii) delete Channel 253A at Vail, Arizona and allot Channel 253A to Corona de Tucson, Arizona; and modify the license of Station KRDX(FM) accordingly, and (iii) delete Channel 279C1 at Lordsburg, New Mexico and allot Channel 279A to Vail, Arizona. The Joint Parties also propose to allot Channel 279C1 to Animas, New Mexico, and Channel 228C1 to Virden, New Mexico as those communities’ first local services.¹⁶ In its Opposition, CCR alleges that the Joint Parties’ Counterproposal is defective for a number of reasons. However, as demonstrated herein, each allegation relies on erroneous facts or misinterpreted law.

7. First, CCR claims that the Joint Parties’ proposal to allot Channel 228C1 to Virden, New Mexico is not mutually exclusive with this proceeding. This claim assumes that mutual exclusivity is based only on technical considerations. However, mutual exclusivity is also present if it ensures that a proposal will not violate the FCC’s legal policies. For example, the FCC routinely permits stations that are not technically linked to a proposal to remain part of a proposal because they ensure that communities do not lose a first local service. In fact this is the

¹⁶ If their Counterproposal is granted, the Joint Parties reiterate that they will file the necessary applications and construct the facilities as authorized.

case in this proceeding. Even though KRDX(FM)'s move from Vail to Corona de Tucson and the move from Lordsburg to Vail are not technically linked to the Joint Parties' Counterproposal, they are nevertheless mutually exclusive because they ensure that Corona de Tucson and Vail retain local service. Similarly, the allotment of Channel 228C1 to Virden ensures that an underserved area is not created and thus is a mutually exclusive part of the Joint Parties' Counterproposal.

8. Second, CCR alleges that Animas is not a community for allotment purposes. However, the Joint Parties provided more than enough factual information (including pictures of the community of Animas) that demonstrates that Animas is a community for allotment purposes.¹⁷ CCR attempts to rebut this evidence but fails. In fact the affidavit of Stephanie Patton attached to CCR's Opposition further demonstrate that Animas is a community for allotment purposes. It acknowledges that Animas has a post office, school district, schools, businesses, and a clinic (the majority with Animas in their name). These indicia are more than enough to demonstrate that Animas is a community for allotment purposes. Also, as demonstrated in the Joint Parties' Counterproposal, the new Animas channel will provide service to a white area with 237 persons in a 4,385 sq. km. area.

9. Third, CCR claims that CCR's proposal to delete Channel 267C3 at Corona de Tucson and allot Channel 267C3 to Tanque Verde is flawed because it is not mutually exclusive. However, CCR is basing mutual exclusivity on KKYZ(FM)'s facilities at Sierra Vista and not at

¹⁷ More specifically, the Joint Parties demonstrated that Animas is located in Hidalgo County, New Mexico, and, according to the Rand McNally Road Atlas (Large Scale ed. 2005), it has a population of 200 persons. Animas has a ZIP code (88020), several businesses, a fire department, several churches and various other community indicia. The United States Postal Service operates a post office in Animas. The Animas Independent School District #6 is headquartered in Animas operating the Animas Elementary School and Animas High School. The Animas Volunteer Fire and Rescue is a combination paid/volunteer department providing firefighting, hazard material response, EMS, extrication and search and rescue services. A number of local businesses are located in Animas including Animas Valley Clinic, Panthers Track Café, Cotton City Grocers, and Linda's Grocery and Bar.

Corona de Tucson. As discussed above, KKYZ(FM) is operating pursuant to an “implied STA” at Sierra Vista because the Commission has already (i) deleted Channel 269A at Sierra Vista, (ii) allotted Channel 267C3 at Corona de Tucson, and (iii) modified the license of KKYZ(FM) accordingly in MB Docket No. 03-141 and this docket is final. KKYZ(FM)’s facilities at Sierra Vista are no longer protected and KKYZ(FM) cannot return to its former allotment at Sierra Vista. Thus, the channel for KKYZ(FM) is allotted to Corona de Tucson and this is the proper facility to consider for mutual exclusivity purposes. Moreover, Section 1.420(i) of the FCC’s Rules states that a station may change community of license “where the amended allotment would be mutually exclusive with the licensee’s or permittee’s present assignment.” Here, the Joint Parties have demonstrated that the proposed allotment of Channel 267C3 at Tanque Verde is mutually exclusive with the present allotment of Channel 267C3 at Corona de Tucson.¹⁸

10. Fourth, CCR alleges that three of the Joint Parties’ proposals are deficient due to terrain obstructions which affect the level of service to the proposed communities. As shown in the Engineering Exhibit, the so called obstructions are minor and will not affect the ability of any of the proposals to provide line of sight to their communities. Nevertheless even if terrain obstructions exist (which the Joint Parties dispute), a signal of at least 79 dBu will be provided to each of the communities taking into account the terrain factors. Under established case law, if, due to terrain, line-of-sight becomes an issue with a proposed allotment, the FCC requires that the proponent demonstrate that a 70 dBu signal will extend beyond the proposed community.¹⁹

¹⁸ To the extent that CCR believes that it is improper to rely on a construction permit authorization to determine mutual exclusivity, this is contrary to existing case law. *See, e.g., Dubach, Louisiana, et al.*, 20 FCC Rcd 19495, ¶11 (2005) (“Community of License and 1.420(i) only require that the proposed reallocation ... be mutually exclusive with the underlying authorization.”). CCR’s reliance of *North Port* and *Cut and Shoot* is also misplaced. *See* Opposition at n.9. These cases addresses proposals that are contingent on the outcome of a different proceeding.

¹⁹ *See Halls Crossroads, Tennessee, et al.*, DA 05-3059, ¶10 (Med. Bur. 2005); *The Dalles* 19 FCC Rcd 10068, ¶¶16-17 (Med. Bur. 2004); *Jackson and Salyersville, Kentucky*, 17 FCC Rcd 4662, 4664 (Mass Med. Bur. 2002); *Madison, Indiana*, 14 FCC Rcd 9518, 9519 (Mass Med. Bur. 1999); *Vacaville and Middletown, California*, 4 FCC Rcd 8315, ¶13 (Mass Med. Bur. 1989).

In all of these cases the line-of-sight was questioned by an opponent but the Commission determined that the proposals complied with Section 73.315 because the proponents were able to show that the proposed 70 dBu signals extended well beyond the respective communities. For example, in *Jackson*, the Commission held, citing *Vacaville*, that a reference site that cannot provide direct line-of-sight coverage is still suitable where the proponent demonstrated that the transmitted signal will exceed 70 dBu over the entire principal community. More recently in *The Dalles* and *Halls Crossroads* decisions, the Commission held that allotments were technically viable when the station, from the proposed transmitter site, would place a 70 dBu contour over 100% of the proposed community. This is the case here and, therefore, the Joint Parties' proposals are in compliance with Section 73.315 of the Commission's Rules.²⁰

III. CONCLUSION.

CCR's proposal should be denied for lack of an available site. However, even if the Commission overlooks this deficiency, the Joint Parties' proposal would be favored. First, as demonstrated in their Counterproposal, the Joint Parties' proposal advances Priority (1) because it provides service to a "white area" of 4,385 sq. km. containing 237 people. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) ("*FM Assignment Policies*"). Second, even though both proposals would further Priority (3) (provision of a first local service), the Joint Parties' proposal better serves the public interest because it will provide first local service to three communities with a larger population (16,538) than CCR's proposal and under Priority (2), would provide a second aural service to 517 people, for a net gain in population of 17,055 under co-equal priorities (2) and (3). CCR-Sierra's proposal provides a first local service to 16,195 but removes the second aural service to at least 9420 (depending on how the

²⁰ CCR also alleges a few additional technical defects with the Joint Parties' Counterproposal. These allegations also misinterpret the FCC's rules and case law and are briefly addressed in the Engineering Exhibit attached hereto.

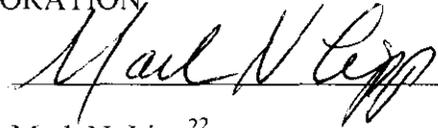
Commission views the number of services in the loss area), for a net gain in population of only 7,775 under co-equal priorities (2) and (3).²¹ Accordingly, the Commission would best serve the public interest by adopting the Joint Parties' Counterproposal.

Respectfully submitted,

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February 7, 2007

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²¹ Because priorities (2) and (3) are co-equal, a net loss in priority (2) population counts against a priority (3) gain. See *Meeker and Craig, Colorado*, 15 FCC Rcd 23858 (Mass Med. Bur. 2000); *Littlefield, Wolfforth, and Tahoka, Texas*, 12 FCC Rcd 3215 (Mass Med. Bur. 1997).

²² Please note the change in address for the Joint Parties' counsel for the purpose of service.

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**Engineering Statement
Comments in MB Docket No. 05-245
February 2007**

This Engineering Statement has been prepared on behalf of Cochise Broadcasting, LLC ("Cochise"), and Desert West Air Ranchers Corporation ("DWAR") in support of Comments filed in MB Docket No. 05-245.

The Notice of Proposed Rulemaking in MB Docket No. 05-245 was issued at the request of CCR-Sierra Vista IV, LLC ("Petitioner"), and proposes the reallocation of Channel 265A from Sierra Vista to Tanque Verde, Arizona, for use by its station KZMK.

Petitioner's Proposal Creates White and Gray Area

Petitioner has inappropriately included several Mexican facilities in its loss area study, as well as a station which has been reallocated out of the area in a previous (and final) rulemaking proceeding. An updated analysis of the Petitioner's loss area, performed in accordance with current Commission policy, reveals that the removal of Channel 265A from Sierra Vista would deprive 186 persons of their sole aural service, and 12,231 persons of their second aural service.

Petitioner has submitted that the entire loss area at Sierra Vista will retain at least four aural services. That analysis, however, improperly considers FM station KKYZ as providing service to the Sierra Vista area. KKYZ was reallocated from Sierra Vista to Corona de Tucson by the Report and Order in MB Docket No. 03-141, released on June 25, 2004, which action is now final. The new KKYZ allotment on Channel 267C3 at Corona de Tucson provides service to only a small portion of the Petitioner's Sierra Vista loss area, not the 100% service indicated by the Petitioner's filing.

Furthermore, the Petitioner claims numerous Mexican stations as providing service to the loss area, despite the fact that the Commission has previously stated that Mexican stations cannot be counted as providing aural service in a domestic FM rulemaking context.¹

For the purposes of a complete record, separate analyses of the KKYZ Sierra Vista loss area have been made using three different sets of assumptions as outlined below, definitively establishing that removal of KKYZ from Sierra Vista will result in the creation of white and/or gray areas.

Scenario #1

This study has been performed in accordance with current Commission policy pertaining to loss area remaining services analysis.

- a) Uniform terrain was assumed, generating circular FM service contours.
- b) This analysis excludes the KKYZ Sierra Vista service area (since that station has been reallocated to Corona de Tucson), as well as the Mexican stations included by the Petitioner. Also excluded are any vacant allotments, unbuilt construction permits, and applications.
- c) In determining reception service provided by FM stations, the area of service circumscribed by the station's 60 dBu signal contour was considered, assuming 1) actual facilities for non-commercial stations operating on reserved channels, 2) maximum facilities for the class of station for stations (other than Class C stations) operating on non-reserved channels, and 3) minimum or existing Class C facilities, whichever is greater, for Class C stations.

¹ "The Notice also discounted service received in the loss area at Nogales, Arizona, from broadcast stations located in Nogales, Sonora, Mexico, since the Commission does not consider foreign stations when determining reception service in allotment proceedings." See Report & Order in MM Docket No. 00-31, *Nogales, Vail and Patagonia, Arizona* (16 FCC Rcd 20515) released November 23, 2001, at paragraph 2.

- d) For clear channel Class A AM stations, the service area was defined by the station's 0.5 mV/m groundwave contour, based on its licensed facilities. For all other classes of full-time AM stations, reception service was defined as that service received within a station's nighttime interference-free contour.²
- e) Since KZMK is coordinated internationally with Mexico as a 3 kW (international Class A, rather than Class AA) station, that station's Sierra Vista facility has been presumed to operate with a maximum of 3 kW ERP at 100 meters HAAT.³
- f) Since KWCD 222A Bisbee is coordinated internationally with Mexico as a 3 kW (international Class A, rather than Class AA) station, that station has been presumed to operate with a maximum of 3 kW ERP at 100 meters HAAT.

Each of the following stations has been found to provide service to some portion of the loss area:

| | | | |
|----------|----------|--------------|-------------------|
| KTAN(AM) | 1420 kHz | Sierra Vista | (NIF = 7.2 mV/m) |
| KNXN(AM) | 1470 kHz | Sierra Vista | (NIF = 14.4 mV/m) |
| KRMB(FM) | 211A | Bisbee | |
| KUAT-FM | 213C | Tucson | |
| KWRB(FM) | 215C2 | Bisbee | |
| KFMA(FM) | 221C2 | Green Valley | |
| KWCD(FM) | 222A | Bisbee | |
| KWMT-FM | 225C | Tucson | |
| KRQQ(FM) | 229C | Tucson | |
| KMXZ-FM | 235C | Tucson | |
| KLPX(FM) | 241C | Tucson | |
| KAVV(FM) | 249A | Benson | |
| KIIM-FM | 258C | Tucson | |
| KHYT(FM) | 298C | Tucson | |

As depicted on the attached map exhibit, the results of this analysis indicate that the reallocation of Channel 265A from Sierra Vista to Tanque Verde will remove the sole aural service from 186

² See *Meeker and Craig, Colorado*, 15 FCC Rcd 23858 (2000), *Stamps and Fouke, Arkansas*, 14 FCC Rcd 10533 (1999), *Silverton and Bayfield, Colorado*, 14 FCC Rcd 4071 (1999), *Malvern and Bryant, Arkansas*, 13 FCC Rcd 8426 (1998), and others.

³ *Nogales, Vail and Patagonia, Arizona*, 16 FCC Rcd 6935 (2001) at 3.

persons in a 101 square kilometer area, and will remove the second aural service from 12,231 persons in a 590 square kilometer area.⁴

Scenario #2

For this study, the only change made to the methodology from Scenario #1 was that for all operating stations, only actual ERP/HAAT were used. For example, a Class C3 station operating with 23 kW at 79 meters HAAT would be considered to be operating with those parameters, rather than maximum Class C3 facilities.

- a) Uniform terrain was assumed, generating circular FM service contours.
- b) This analysis excludes the KKYZ Sierra Vista service area (since that station has been reallocated to Corona de Tucson), as well as the Mexican stations included by the Petitioner. Also excluded are any vacant allotments, unbuilt construction permits, and applications.
- c) In determining reception service provided by FM stations, the area of service circumscribed by the station's 60 dBu signal contour was considered, assuming 1) actual facilities for non-commercial stations operating on reserved channels, and 2) actual facilities for stations operating on non-reserved channels.
- d) For clear channel Class A AM stations, the service area was defined by the station's 0.5 mV/m groundwave contour, based on its licensed facilities. For all other classes of full-time AM stations, reception service was defined as that service received within a station's nighttime interference-free contour.

⁴ It is acknowledged that these results are somewhat different from the results in Cochise/DWAR's original Comments in this proceeding. That earlier study had included the unbuilt construction permit facility for KCDQ 237CØ Tombstone. Since the KCDQ Tombstone facility remains unbuilt, it has been excluded from the instant analysis.

Note that since KZMK is licensed for operation with 3 kW ERP at -14 meters HAAT, its existing service area (i.e. the loss area) has a radius of only 13.3 km under this methodology.

Each of the following stations has been found to provide service to some portion of the loss area:

| | | | |
|----------|----------|--------------|-------------------|
| KTAN(AM) | 1420 kHz | Sierra Vista | (NIF = 7.2 mV/m) |
| KNXN(AM) | 1470 kHz | Sierra Vista | (NIF = 14.4 mV/m) |
| KRMB(FM) | 211A | Bisbee | |
| KWRB(FM) | 215C2 | Bisbee | |
| KWCD(FM) | 222A | Bisbee | |

As depicted on the attached map exhibit, the results of this analysis indicate that the reallocation of Channel 265A from Sierra Vista to Tanque Verde will remove the second aural service from 9,420 persons in a 141 square kilometer area.

Scenario #3

For this study, one additional change was made to the methodology from Scenario #2. The "flat earth" assumption of uniform terrain was abandoned, and all FM station contours were calculated from their operating parameters in accordance with the methodology of §73.313 of the Commission's Rules.

- a) Contours were calculated at one degree increments per the methodology in §73.313 of the Commission's Rules. The resulting contours are terrain-affected and not necessarily circular.
- b) This analysis excludes the KKYZ Sierra Vista service area (since that station has been reallocated to Corona de Tucson), as well as the Mexican stations included by the Petitioner. Also excluded are any vacant allotments, unbuilt construction permits, and applications.
- c) In determining reception service provided by FM stations, the area of service circumscribed by the station's 60 dBu signal contour was considered, assuming 1)

actual facilities for non-commercial stations operating on reserved channels, and
 2) actual facilities for stations operating on non-reserved channels.

- d) For clear channel Class A AM stations, the service area was defined by the station's 0.5 mV/m groundwave contour, based on its licensed facilities. For all other classes of full-time AM stations, reception service was defined as that service received within a station's nighttime interference-free contour.

Each of the following stations has been found to provide service to some portion of the loss area:

| | | | |
|----------|----------|--------------|-------------------|
| KTAN(AM) | 1420 kHz | Sierra Vista | (NIF = 7.2 mV/m) |
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| KRMB(FM) | 211A | Bisbee | |
| KUAT-FM | 213C | Tucson | |
| KWRB(FM) | 215C2 | Bisbee | |
| KWCD(FM) | 222A | Bisbee | |
| KAVV(FM) | 249A | Benson | |

As depicted on the attached map exhibit, the results of this analysis indicate that the reallocation of Channel 265A from Sierra Vista to Tanque Verde will remove the second aural service from 10,588 persons in a 394 square kilometer area.

There are No Known Transmitting Facilities in the Pusch Ridge Wilderness Area

In Cochise and DWAR's original comments in this proceeding, it was established that the Petitioner's originally proposed allotment site for Channel 265A at Tanque Verde were located within the Pusch Ridge Wilderness Area, where as a matter of federal law they would be prohibited from constructing a tower. In its Reply Comments, Petitioner disagrees with that conclusion, stating that "A brief, unexhaustive, review of the FCC Wireless Bureau database revealed four FCC licenses in the Pusch Ridge Wilderness area. The call signs are WPID654, WQCR580, WLO731, and WPNX283." Based on our detailed review, however, none of these licenses reflects an actual fixed transmit location within the Pusch Ridge Wilderness Area.

WPID654 is a license for mobile operations only, for use in an 8.0 km radius around two centerpoints. This license does not include any fixed transmitter site.

Hatfield & Dawson Consulting Engineers

Therefore, it is irrelevant that one of the centerpoints is located within the Pusch Ridge Wilderness Area.⁵

WQCR580 is an Industrial/Business Pool license for fixed operations. At the time Petitioner filed its Reply Comments, that license listed a transmit "Location #6" at NAD N32-20-21.8 x W110-43-18.4, which location is within the Pusch Ridge Wilderness Area. On February 15, 2006, however, the WQCR580 licensee filed its required construction notification. On that application, Location #6 was omitted, indicating that there was no facility operating at that location. The current WQCR580 license does not include that location.

WLO731 is a license for an aural STL for FM station KGMG Channel 292C2 Oracle, Arizona. While the license lists a transmit location at NAD83 N32-24-55.3 x W110-45-54.3, which location is within the Pusch Ridge Wilderness Area, the location description ("Mt. Bigelow Electronic Site") and site elevation (2603 meters AMSL) are wholly inconsistent with the coordinates, which are for a location at 2213 meters AMSL on the south slope of Marshall Peak. The Mt. Bigelow Electronic Site is in fact located precisely 3 minutes of longitude east of the WLO731 licensed transmit coordinates, at 2603 meters AMSL, and outside the Pusch Ridge Wilderness Area. Clearly, the coordinates on the WLO731 license are the result of a typographical error by the licensee.

WPNX283 is an Industrial/Business Pool license for fixed operations. While the license lists a transmit location of NAD83 N32-24-17.3 x W110-52-16.3, which location is within the Pusch Ridge Wilderness Area, the location description ("Old Dominion Domestic, Miami, AZ, Gila County") and site elevation (1090 meters AMSL) are wholly inconsistent with the coordinates, which are for a location at 1530 meters AMSL in Montrose Canyon, in Pima County. The WPNX283 licensee

⁵ Furthermore, WPID654 expired on 9/26/2005, eight days prior to the date when Petitioner filed its Reply Comments.

is BHP Copper, Inc., which (as described on the license) "is engaged in the operation of copper mines as a commercial activity" at Miami, Arizona. Miami is located precisely 1 degree of latitude north of the WPNX283 licensed transmit coordinates, at 1090 meters AMSL, and outside the Pusch Ridge Wilderness Area. Clearly, the coordinates on the WPNX283 license are the result of a typographical error by the licensee.

Petitioner's Proposed Allotment Site in the Coronado National Forest

Despite their self-described "unexhaustive" attempt to prove that a transmitter site could be built within the Pusch Ridge Wilderness Area, Petitioner offers up an alternative Tanque Verde 265A allotment site within the Coronado National Forest. While Petitioner notes that there are numerous examples of broadcast transmitting stations located on National Forest land, including sites within the Coronado National Forest, it is notable that Petitioner has not proposed the use of any of those existing sites. Rather, the alternative site (located all of 135 feet from the edge of the Wilderness Area) is 9 kilometers south of the existing broadcast facilities they cite on Mount Bigelow.

Furthermore, absent any affirmative statement from the Forest Service, it remains to be seen whether Petitioner could secure permission to establish a new broadcast transmitter site so close to the edge of the Wilderness Area, at a location with no existing road access (based on review of the USGS 7.5 minute topo map as well as recent aerial photography), and just 1700 feet from and within clear view of the General Hitchcock Highway (commonly referred to as the Mount Lemmon Highway or sometimes the Catalina Highway) which is a designated Scenic Byway considered to be one of the most scenic roads in southeast Arizona.⁶

Cochise/DWAR Proposal Short-Spacings to Mexican Allotments and Stations

Petitioner suggests that the Cochise/DWAR proposal to allot Channel 267C3 at Tanque Verde would be in violation of §73.316 of the Commission's Rules and Section 1.4.1 of the US-Mexico

⁶ <http://www.go-arizona.com/Mt-Lemmon-Scenic-Byway/>

FM Agreement, in that this allotment would require a 15.85 dB null depth towards Sasabe, Mexico Channel 266B.

This is not a flaw in the Cochise/DWAR proposal. It is believed to be consistent with the terms of the US-Mexico FM Agreement to coordinate Tanque Verde Channel 267C3 with Mexico as a specially-coordinated short-spaced allotment, with a power restriction which would ensure that the maximum 15 dB null depth permitted by §73.316 would not be exceeded. Such a power restriction (of only 0.85 dB) would not alter the allotment's ability to provide 70 dBu service to 100% of Tanque Verde, as the far side of Tanque Verde is only 20.1 kilometers from the proposed allotment site, and the standard 70 dBu contour distance for a Class C3 station is 23.2 kilometers.

Cochise/DWAR Proposal Alleged Line-of-Sight Issues

Petitioner suggests that the Cochise/DWAR proposals to allot Channel 267C3 at Tanque Verde, Channel 253A at Corona de Tucson, and Channel 228C1 at Virden violate §73.315 due to alleged "significant terrain obstruction" between the allotment coordinates and communities of license.

In fact, the terrain path plots included in Petitioner's Reply Comments indicate nothing more than a slight terrain obstruction along a single path into each community. By no means do these obstructions rise to the level of "significant."

This firm has repeated the Petitioner's path studies, utilizing terrain elevations extracted every 0.1 km from the 3-arc second terrain database, and find either no terrain obstruction, or at worst a slight terrain obstruction. (See attached path plots.) In no case is the terrain obstruction significant enough to prevent 70 dBu service.

Tanque Verde: Our study indicates that there is no terrain obstruction to the study point. The Longley-Rice v1.2.2 model predicts a received F(50,50) signal level of fully 80.9 dBu, allowing for more than 10 dB of margin over the required 70 dBu.

Corona de Tucson: As a threshold matter, it should be noted that the receive site utilized by Petitioner is not located within the boundaries of the community Corona de Tucson. Our study corrects the study to utilize a receive site within Corona de Tucson, and also utilizes the antenna height of the authorized KRDX facility at this site. (Petitioner had underestimated the transmit site elevation.) Our study indicates that there is only a slight terrain obstruction to the study point. The Longley-Rice v1.2.2 model predicts a received F(50,50) signal level of fully 79.3 dBu, allowing for more than 9 dB of margin over the required 70 dBu.

Virden: Our study indicates that there is only a slight terrain obstruction to the study point. The Longley-Rice v1.2.2 model predicts a received F(50,50) signal level of fully 82.5 dBu, allowing for more than 12 dB of margin over the required 70 dBu.

Statement of Engineer

This Engineering Statement has been prepared by Erik C. Swanson under my direct supervision. I hereby declare that the facts set out in the foregoing Engineering Statement, except those of which official notice may be taken, are true and correct.

Signed this 6th day of February, 2007.



Benjamin F. Dawson III, P.E.

Erik C. Swanson

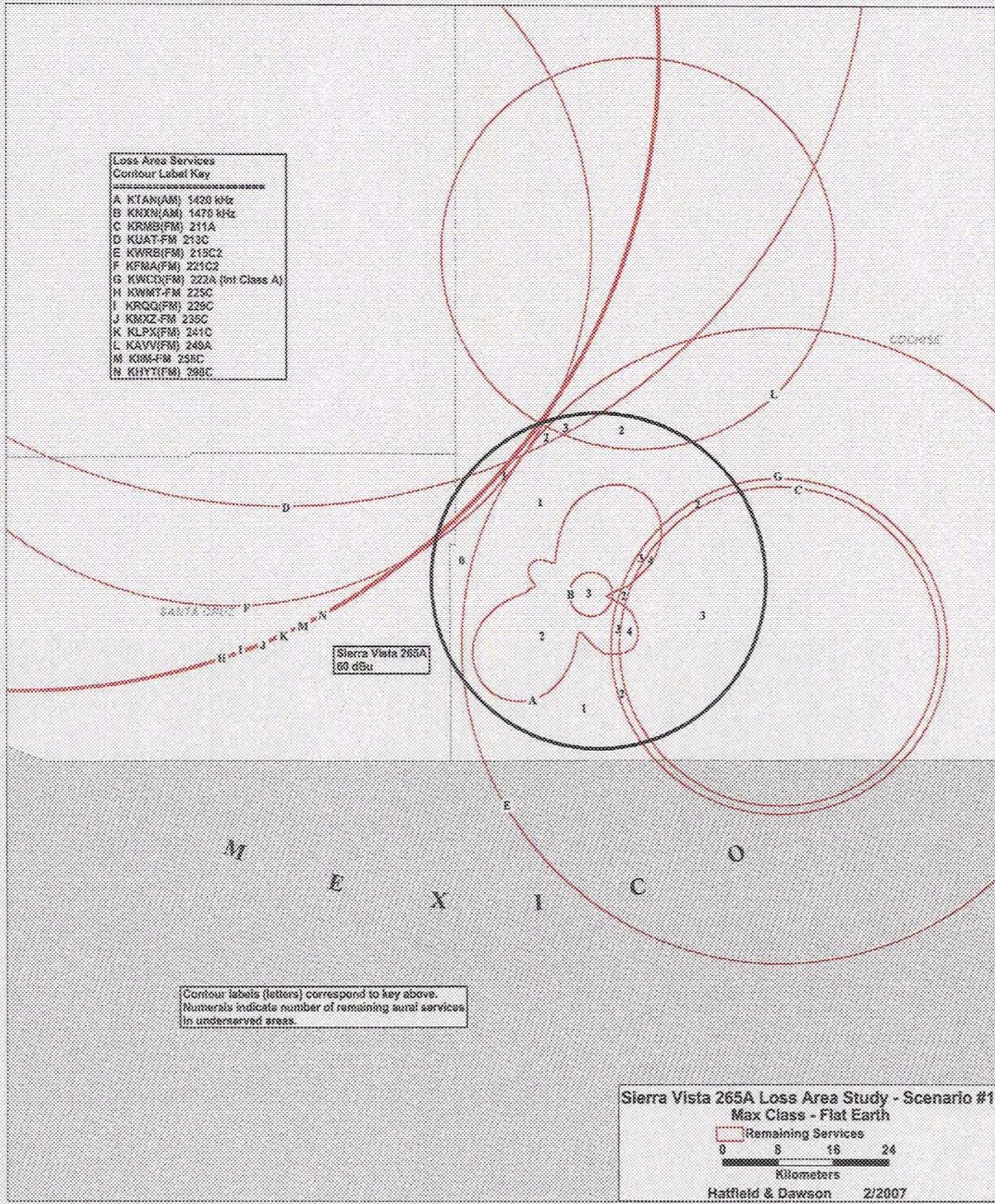
Hatfield & Dawson Consulting Engineers

KZMK Loss Area Study Maps

Hatfield & Dawson Consulting Engineers

Loss Area Services
Contour Label Key

| | | |
|---|----------|--------------------|
| A | KTAN(AM) | 1430 kHz |
| B | KXKN(AM) | 1470 kHz |
| C | KRNB(FM) | 211A |
| D | KUAT(FM) | 213C |
| E | KWRB(FM) | 215C2 |
| F | KFNA(FM) | 215C2 |
| G | KWCD(FM) | 222A (Int Class A) |
| H | KWMT(FM) | 225C |
| I | KRQG(FM) | 229C |
| J | KMXZ(FM) | 239C |
| K | KLPX(FM) | 241C |
| L | KAVV(FM) | 249A |
| M | KOBS(FM) | 258C |
| N | KHYT(FM) | 298C |



**Loss Area Services
Contour Label Key**

| | | |
|---|----------|----------|
| A | KTAN(AM) | 1420 kHz |
| B | KRXN(AM) | 1470 kHz |
| C | KRMB(FM) | 211A |
| D | KWRB(FM) | 219C2 |
| E | KWCI(FM) | 222A |

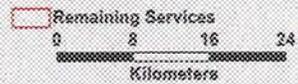
**Sierra Vista 265A
60 dBu**

SANTA CRUZ

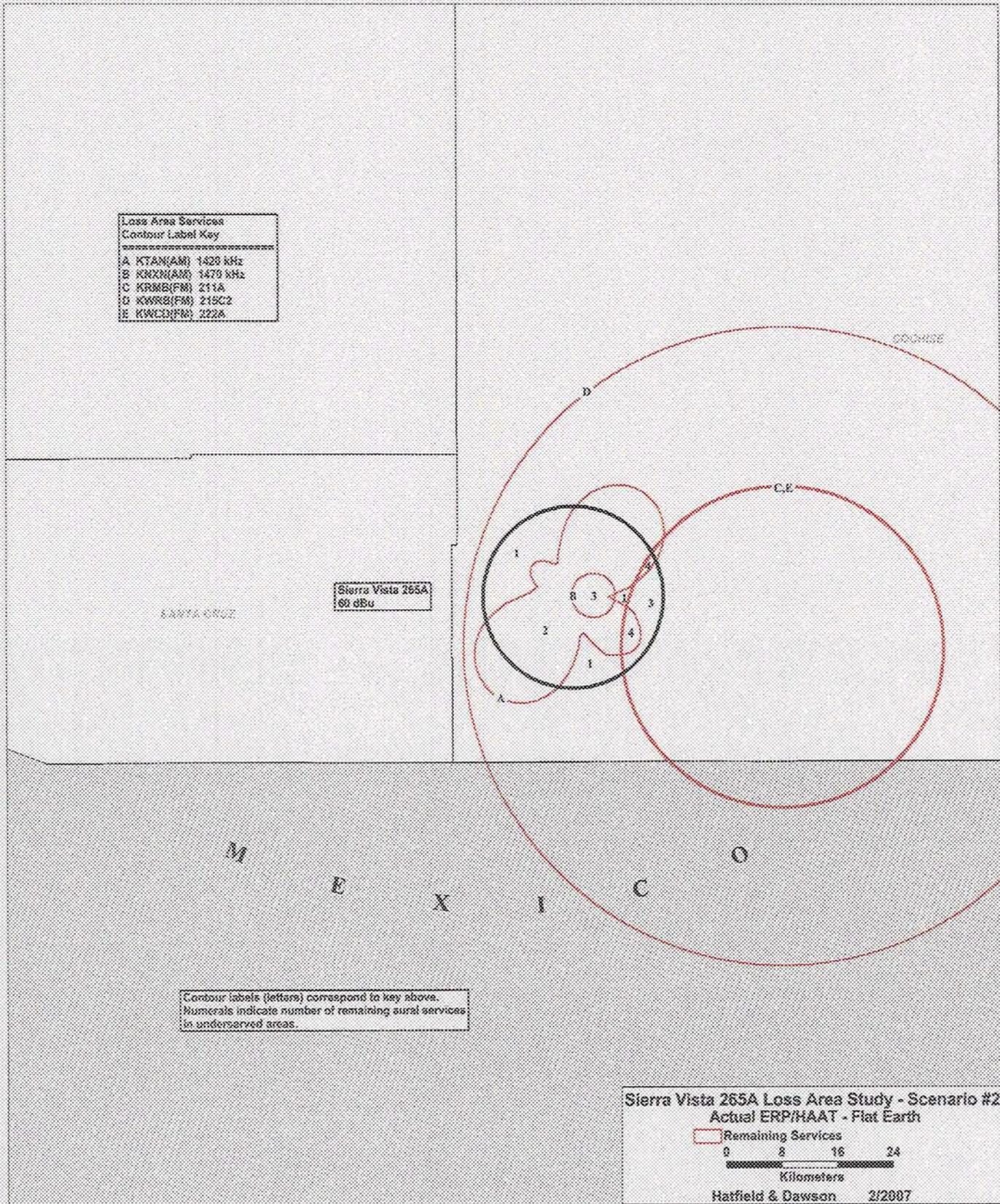
M E X I C O

Contour labels (letters) correspond to key above.
Numerals indicate number of remaining aural services
in underserved areas.

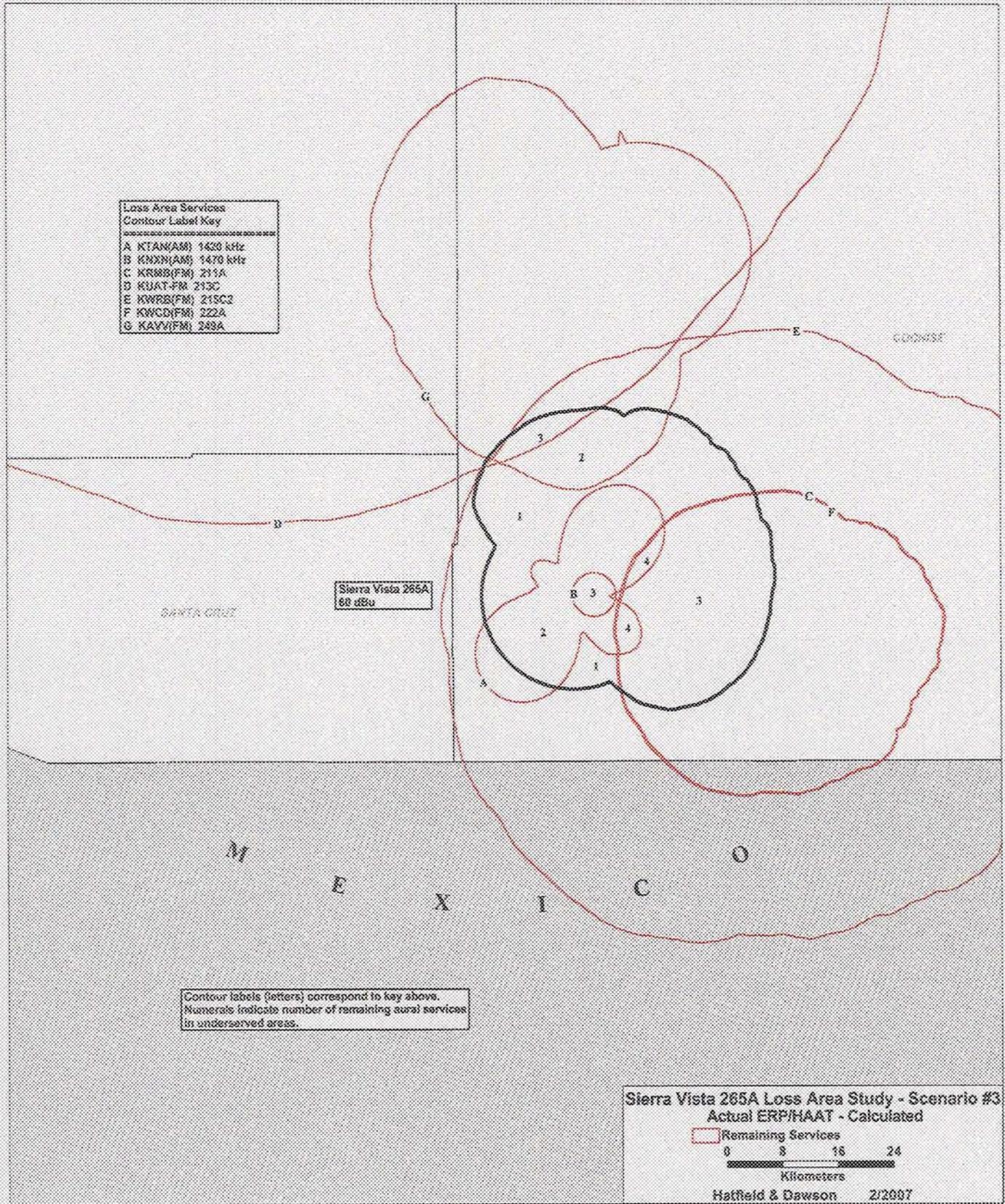
**Sierra Vista 265A Loss Area Study - Scenario #2
Actual ERP/HAAT - Flat Earth**



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| Loss Area Services Contour Label Key | |
|---|-------------------|
| A | KTAN(AM) 1420 kHz |
| B | KNXN(AM) 1470 kHz |
| C | KRWB(FM) 215A |
| D | KJAT-FM 215C |
| E | KWRB(FM) 215C2 |
| F | KWCD(FM) 222A |
| G | KAVI(FM) 249A |



Contour labels (letters) correspond to key above.
Numerals indicate number of remaining aural services
in underserved areas.

Sierra Vista 265A Loss Area Study - Scenario #3
Actual ERP/HAAT - Calculated

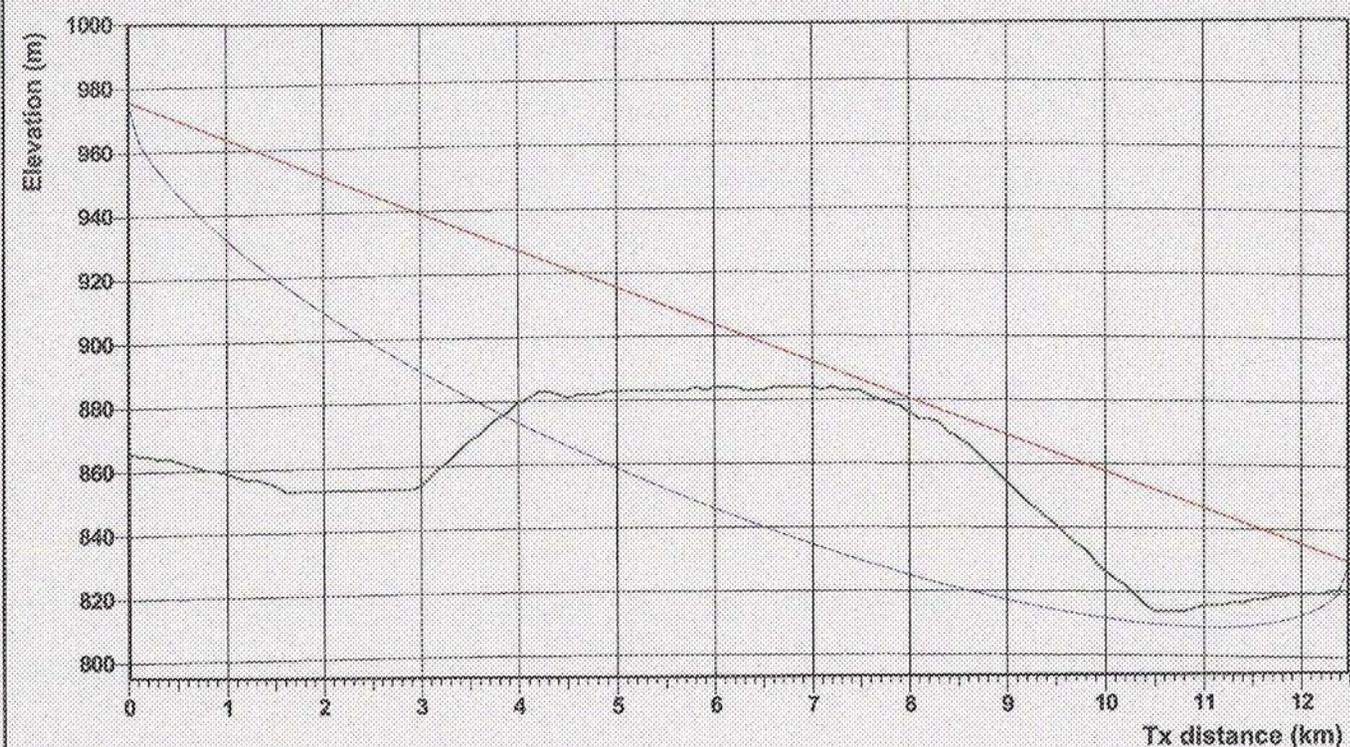
Remaining Services

0 8 16 24
Kilometers

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Cochise/DWAR Proposal Path Studies

Hatfield & Dawson Consulting Engineers



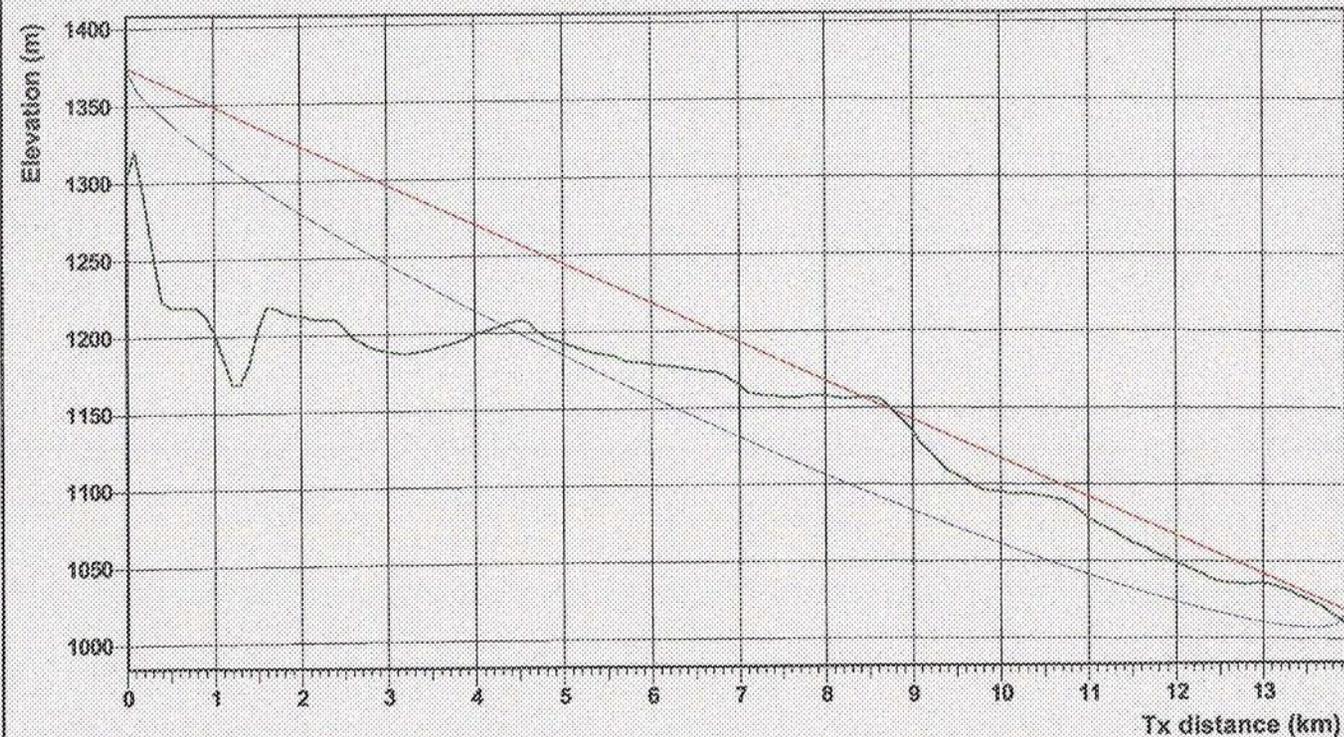
SIGNAL®
 Prop. model: Longley-Rice v1.2.2
 Time: 50.00 % Loc.: 50.00 %
 Margin: 0.00 dB
 Climate: Continental Temperate
 Atm. factor: none
 K factors: 1.333, 1.000, 1.000

Transmitter Site: 267C3 Allot
 Name: Tx001
 Location:
 N32°08'45.00" W110°46'56.00"
 Site elevation: 876.0 m
 Antenna height: 100.0 m
 Pointing azimuth: 20.0 °
 Total ERPd: 7.78 dBkW

Name: Tx001 ->Rx001
 Frequency: 101.3000 MHz
 Polarization: horizontal
 Length: 12.52 km
 Number of obstacles: 0
 Excess path loss: 11.83 dB
 Atm. absorption loss: 0.00 dB
 Path loss for stats: 106.33 dB

Receiver Site: Tanque Verde
 Name: Rx001
 Location:
 N32°15'06.00" W110°44'12.00"
 Site elevation: 821.1 m
 Antenna height: 9.1 m
 Pointing azimuth: 200.0 °
 Received signal level: -34.25 dBmW (80.9 dBu)

Notes



SIGNAL®

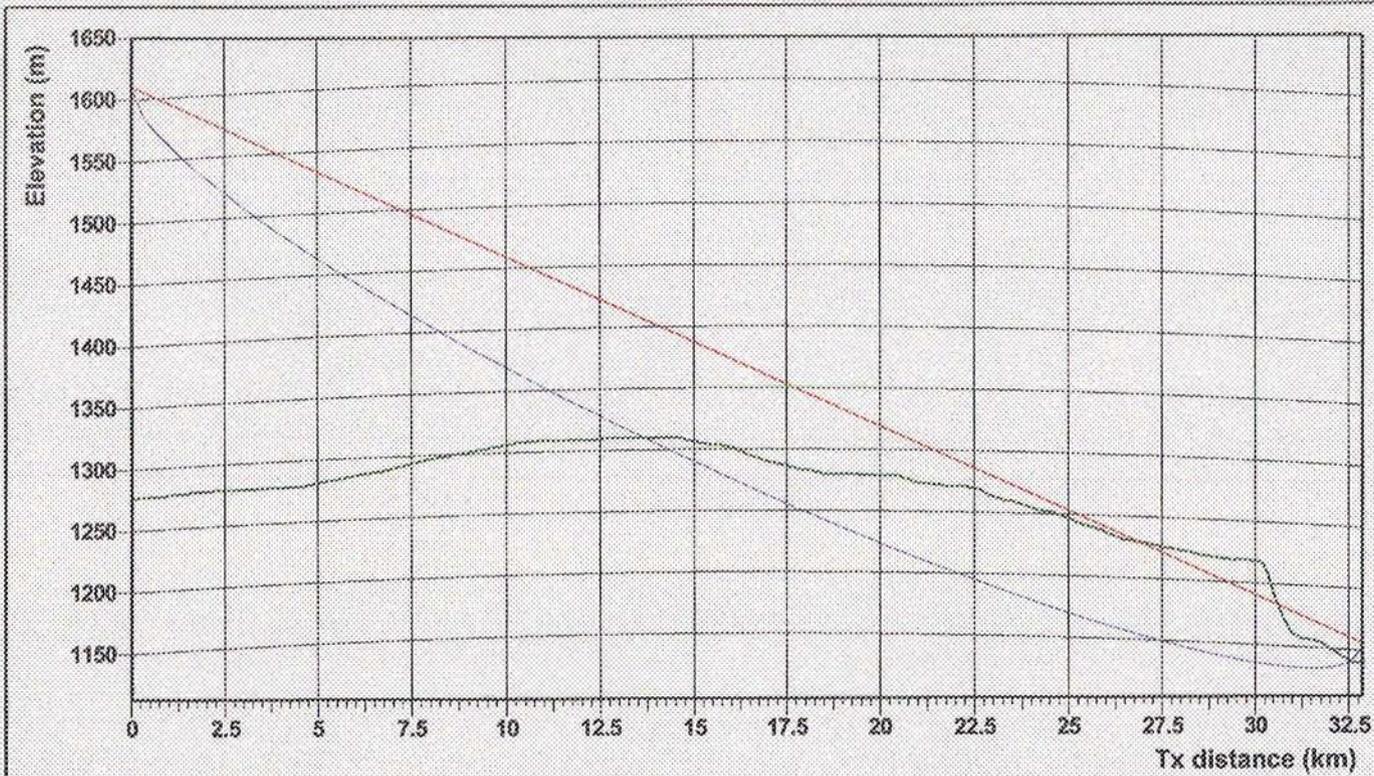
Prop. model: Longley-Rice v1.2.2
 Time: 50.00 % Loc.: 50.00 %
 Margin: 0.00 dB
 Climate: Continental Temperate
 Atm. factor: none
 K factors: 1.333, 1.000, 1.000

Transmitter Site: 253A Allot
 Name: Tx001
 Location:
 N31°55'39.00" W110°37'57.00"
 Site elevation: 1363.0 m
 Antenna height: 12.0 m
 Pointing azimuth: 285.8 °
 Total ERP: 5.91 dBk

Name: Tx001 ->Rx001
 Frequency: 98.5000 MHz
 Polarization: horizontal
 Length: 13.96 km
 Number of obstacles: 0
 Excess path loss: 10.56 dB
 Atm. absorption loss: 0.00 dB
 Path loss for stats: 105.78 dB

Receiver Site: Corona de Tucson
 Name: Rx001
 Location:
 N31°57'42.00" W110°46'30.00"
 Site elevation: 1009.2 m
 Antenna height: 9.1 m
 Pointing azimuth: 105.8 °
 Received signal level: -35.57 dBmW (79.3 dBu)

Notes



SIGNAL®

Prop. model: Longley-Rice v1.2.3
 Time: 50.00 % Loc.: 50.00 %
 Margin: 0.00 dB
 Climate: Continental Temperate
 Atm. factor: none
 K factors: 1.333, 1.000, 1.000

Transmitter Site: 228C1 Allot
 Name: Tx001
 Location:
 N32°24'12.00" W108°53'59.00"
 Site elevation: 1277.0 m
 Antenna height: 334.0 m
 Pointing azimuth: 343.2 °
 Total ERP: 20.00 dBkW

Name: Tx001 ->Rx001
 Frequency: 93.5000 MHz
 Polarization: horizontal
 Length: 32.93 km
 Number of obstacles: 0
 Excess path loss: 14.08 dB
 Atm. absorption loss: 0.00 dB
 Path loss for stats: 116.29 dB

Receiver Site: Virden
 Name: Rx001
 Location:
 N32°41'13.00" W109°00'05.00"
 Site elevation: 1147.0 m
 Antenna height: 9.1 m
 Pointing azimuth: 163.2 °
 Received signal level: -31.99 dBmW (82.5 dBu)

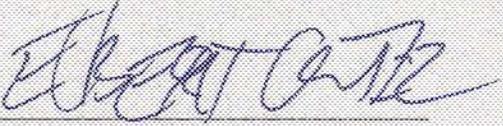
Notes

CERTIFICATE OF SERVICE

I, Elbert Ortiz, do hereby certify that I have on this 7th day of February, 2007, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Reply Comments" to the following:

*Rolanda F. Smith
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Elbert Ortiz