Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands	)	WT Docket No. 06-150
	)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
	)	
Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones	)	WT Docket No. 01-309
	)	
Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services	)	WT Docket No. 03-264
	)	
Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules	)	WT Docket No. 06-169
	)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band	)	PS Docket No. 06-229
	)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010	)	WT Docket No. 96-86
	)	
Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule	)	WT Docket No. 07-166
	)	

PETITON FOR RECONSIDERATION

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SUMMARY

The Commission should reconsider requiring licensees of C Block Upper 700 MHz spectrum to meet population-based construction benchmarks rather than geographic based-benchmarks. The population-based benchmarks are not consistent with Section 309(j) of the Act, because such benchmarks will not "ensure prompt delivery of service to rural areas, [or] … prevent stockpiling or warehousing of spectrum by licensees or permittees…." Population-based benchmarks also will not promote the development and rapid deployment of new technologies, products, and services to members of the public residing in rural areas, or disseminate C Block licenses among a wide variety of applicants, including small businesses and rural telephone companies.

History in other services, and the maps attached hereto, indicate that C Block licensees will be able to satisfy their applicable population-based benchmarks by providing service only to urban and densely populated areas. The population-based benchmarks will not encourage C Block licensees to provide service to rural areas or to work with companies that would be willing to provide service to such areas. By the Commission's own design, C Block-based services are likely to be very different from the services provided on other 700 MHz blocks. By failing to adopt performance benchmarks that ensure the prompt delivery of advanced C-Block based services to rural areas, the Commission has failed to comply with the Act. Rather than population-based benchmarks, the Commission should apply geographic-based benchmarks. This would be consistent with the Commission's determination that 700 MHz spectrum is ideally suited for the provision of service to rural areas.

The Commission also should reconsider its position that it may subject licensees that fail to meet applicable construction benchmarks to additional enforcement action above and beyond the "keep-what-you-use" re-licensing rules.

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To: The Commission

PETITON FOR RECONSIDERATION

The Rural Telecommunications Group, Inc. ("RTG"),[1] by its attorneys, and pursuant to Section 1.429 of the rules and regulations of the Federal Communications Commission ("FCC"

[1] RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. RTG's members have joined together to speed delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG's members are small, rural businesses serving or seeking to serve secondary, tertiary and rural markets. RTG's members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

or "Commission"), hereby petitions the Commission to reconsider the adoption, in the *700 MHz Second Report and Order*,[2] of population-based performance requirements rather than geographic-based requirements for the Upper 700 MHz C Block licenses. As discussed herein, the Commission's adoption of population-based requirements is not consistent with the public interest or with the Commission's obligations under Section 309(j) of the Communications Act, as amended (the "Act"). RTG also requests that the Commission reconsider its threat that licensees that fail to meet the applicable construction benchmarks may be subject to additional enforcement action, including loss of license.

I. BACKGROUND

In the *Order*, the Commission decided to assign licenses in the Lower 700 MHz A, B and E Blocks on the basis of Economic Areas ("EAs") and Cellular Market Areas ("CMAs"), and the licenses in the Upper 700 MHz C Block on the basis of the huge Regional Economic Area Groupings ("REAGs").[3] Licensees of the A, B, C and E Blocks must meet a 4-year interim construction benchmark as well as an end-of-term benchmark. If a licensee fails to meet the interim benchmark, then its license term will be shortened by two years and its end-of-term construction obligation accelerated accordingly.

If a licensee fails to meet the end-of-term performance benchmark it is subject to "keep-what-you-use" rules. Specifically, if a licensee fails to meet its end of term benchmark, it may continue to keep the license for the areas it serves, but its license for the areas which it does not serve will automatically terminate and those geographic areas will become available for re-licensing. *See Order* ¶ 170. The Commission adopted the "keep-what-you-use" rules to

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[2] *In re Service Rules for the 698-746 and 777-792 MHz Bands*, Second Report and Order, FCC 07-132 (rel. Aug. 10, 2007) ("*Order*") ¶¶ 162-164.

[3] The Commission also decided to assign the license for the Upper 700 MHz D Block on a nationwide basis.

"provide additional methods for making smaller license areas available, thus promoting access to spectrum and the provision of service, especially in rural areas" and to "ensure[] that others are given an opportunity to acquire spectrum that is not adequately built out and [to] provide services to those who reside in those areas." *Order* ¶ 156 (footnote omitted).

In addition to being subject to the "keep-what-you-use" rule, licensees that fail to meet their performance benchmarks "may also be subject to potential enforcement action, including possible forfeitures or cancellation of license." *Order* ¶ 153. The Commission, however, did not provide any guidance as to what factors would determine whether a licensee would be subject to such potential enforcement action. In addition, for licensees failing to meet the interim construction benchmark, the Commission reserved the right "to impose a proportional reduction in the size of the licensed area." *Id*. The Commission did not, however, provide any guidance regarding when or under what circumstances it would take such action.

For the performance benchmarks themselves, the Commission adopted geographic-based requirements for the CMA and EA licenses. Specifically, for licenses based on CMAs and EAs, licensees must provide signal coverage and offer service to: (1) at least 35 percent of the geographic area of their license within four years of the end of the DTV transition, and (2) at least 70 percent of the geographic area of their license at the end of the license term. In adopting geographic-based benchmarks for licenses based on CMAs and EAs, the Commission specifically sought "to promote service across as much of the geographic area of the country as is practicable." *Order* ¶ 158. The Commission agreed with Cellular South "that the uniqueness of the 700 MHz spectrum justifies the use of geographic benchmarks and that the band's excellent propagation characteristics make it ideal for delivering advanced wireless services to rural areas." *Order* ¶ 158 (footnote omitted); *see also id.* ¶ 176.

For the REAG licenses, however, the Commission adopted population-based rather than geographic based requirements. Specifically, for REAG-based licenses, licensees must provide

signal coverage and offer service to: (1) at least 40 percent of the population of the license area within four years, and (2) at least 75 percent of the population of the license area by the end of the license term. *Order* ¶162. The Commission reasoned that the use of population-based benchmarks for REAG licensees was "appropriate for licensees with large geographic areas to allow for roll out of advanced services on a nationwide or regional basis." *Order* ¶ 164. Expressing a recognition of the capital needed and logistical challenges of building a "nationwide" or regional system, the Commission stated, "The use of benchmarks based on population, rather than geographic area, may best allow a potential new entrant to achieve the economies of scale needed for a viable business model, while also ensuring that a majority of the population in a given region may have access to these services." *Id*. Finally, noting that large operators will "need to spread the costs of developing such operations over as many customers as possible," the Commission concluded, "The use of population-based benchmarks, rather than geographic benchmarks, allows these new and existing providers to promptly and efficiently develop these new services, thus reaching more consumers more quickly." *Id*.

While RTG supports the Commission's efforts to promote deployment of services in rural areas through geographic-based requirements for the EA and CMA licenses, the Commission should reconsider its decision to apply population-based requirements to the REAG licenses. The Commission also should limit the penalty for failure to meet applicable construction benchmarks to loss of unserved area under the "keep-what-you-use" rules.

II. ARGUMENT

The Commission should reconsider its use of population-based requirements for the C Block and should instead impose geographic-based requirements. Geographic-based requirements, coupled with the "keep-what-you-use" rules will promote the deliver of service to rural areas and will ensure participation by small and rural companies.

A. The Use of Population-Based Performance Requirements is Inconsistent with Section 309(j) and the Public Interest

In prescribing regulations for awarding licenses for new services through competitive bidding, Section 309(j)(4) of the Act, among other things, directs the Commission to adopt performance requirements "to ensure prompt delivery of service to rural areas, [and] to prevent stockpiling or warehousing of spectrum by licensees or permittees…." 47 U.S.C. § 309(j)(4)(B). In addition, in specifying the characteristics of licenses awarded through competitive bidding, Section 309(j)(3) requires the Commission to protect the public interest, to promote the "development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas," and to disseminate "licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women…." 47 U.S.C. § 309(j)(3)(A)&(B). The adoption of population-based benchmarks fails to satisfy the mandate of Congress.

1. REAG Licensees Will Be Able to Meet Population-Based Benchmarks by Providing Service Only to Densely Populated Areas

Large licensees will be able to satisfy the 40% and 75% population benchmarks by providing service to metropolitan and densely populated areas without ever providing service to rural areas and small cities and towns. The realities of population distribution in the United States mean that a C Block licensee will be able to satisfy its performance obligations by only providing service to urban area leaving rural areas unserved. This reality was demonstrated time and time again by A and B Block PCS licensees certifying compliance with applicable 1/3rd and 2/3rds population coverage benchmarks *without* providing service to rural areas. Although the 700 MHz C Block benchmarks are slightly higher than those for the PCS A and B Blocks, the slight increase will not significantly alter the amount of coverage to rural and other less densely populated areas.

The Commission's decision to require C Block licensees to demonstrate compliance on an EA-basis also will not meaningfully encourage additional deployment to rural areas.[4] EAs by definition are based on patterns of commerce and include urban or densely populated areas. The EA-measurement requirement may prevent a nationwide licensee from providing service only to Los Angeles, Chicago and New York and thereby satisfying its construction obligations, but the EA-measurement requirement will not, for example, prevent a licensee from meeting its entire construction obligation for the Dallas-Fort Worth, TX, AR, OK EA by providing service only in the densely populated areas of Dallas and Fort Worth, leaving huge swaths of rural areas and small towns unserved. This same result occurs in EAs throughout the country.

The map attached as Attachment 1 depicts the coverage required for the C Block licensee to satisfy the applicable 75% population-based coverage requirement in the Austin-San Marcos, Texas EA (BEA130). The map demonstrates that even in this moderately dense EA, the C Block licensee will be able to meet the end-of-term benchmark without providing service to the majority of the EA. By way of comparison, the map in Attachment 2 depicts the coverage required for a licensee to serve 70% of the geographic area. Attachment 3 depicts the coverage required for a C Block licensee to meet the population-based benchmark for the Los Angeles-Riverside-Orange County, CA-AZ BEA (BEA160). Also by way of comparison, the map in Attachment 4 depicts the coverage required for the licensee to serve 70% of the geographic area.

As history and the attached maps reveal, the reality remains that licensees in the Upper 700 MHz C Block will be able to satisfy their construction obligations without providing service

[4] *See Order* ¶ 164 (asserting that use of EAs to measure build-out for REAG licenses will avoid the result of REAG licensees being able to meet their performance requirements largely by serving urban areas only). While the EA-measurement requirement may prevent a degree of urban concentration of system buildout, it will not "avoid" C Block licensees serving urban areas only.

to rural areas, and without partitioning to or partnering with other companies that would be willing to provide service to secondary and rural markets.[5]

2. By the Commission's Design, C Block Services Are Likely to Differ from Services Provided on Lower 700 MHz Spectrum

By the Commission's own design, the type of services that will be deployed utilizing the C Block license are likely to be very different than the services that may be provided using other 700 MHz licenses. In specifically allocating 22 MHz to the C Block, the Commission recognized that at least 20 MHz of paired spectrum would be necessary to provide 4G services. *See Order* ¶ 76-77. The Commission envisions that services on the C Block spectrum may compete with wired broadband offerings. The Commission also imposed "open platform" requirements on the C Block reasoning that such requirements will promote innovation and consumer choice. *See Order* ¶ 201.

If the Commission is correct in its vision, the services provided using the C Block may far exceed those provided using the A or B Block both in speed and diversity, and may differ significantly in character. In short, by the Commission's own design, the Lower and Upper 700 MHz spectrum is not fungible, and the services to be provided may differ significantly.

By licensing the Lower 700 MHz spectrum on an EA/CMA basis, utilizing geographic based performance benchmarks, and applying the "keep-what-you-use" rule, the FCC has ensured the delivery of Lower 700 MHz services to rural areas. The Commission, however, has not done the same for the anticipated innovative and high speed C Block-based services. By

[5] While C Block licensees will be able to satisfy their 40/75% population-based construction obligations by providing service only to urban or densely populated areas, licensees of EAs and CMAs will be serving the public interest by deploying service to 70% of the geographic area of their license areas. This will result in coverage to a substantially higher percentage of the population. For example, Attachments 5, 6, and 7 depict the coverage necessary for a licensee to satisfy the 70% coverage benchmark in the Texas 12, 13, and 14 CMAs. This will result in coverage to 94.98%, 93.99%, and 93.70% of the populations of these markets, respectively. The 70% geographic coverage of the Austin and Los Angeles EAs depicted in Attachments 2 and 4 would result in coverage to 94.08% and 97.99% of the population of those EAs, respectively.

failing to ensure the prompt delivery of these C Block-based services to rural areas, and to prevent stockpiling or warehousing of C Block spectrum by licensees in less densely populated areas, the Commission has failed to comply with the mandate of Section 309(j).

B. The FCC's Adoption of Population-based Requirements for the C Block is Inconsistent with Its Adoption of Geographic-based Requirements for the Lower 700 MHz Blocks

The Commission's use of population-based requirements for the C Block is inconsistent with the Commission's adoption of geographic-based requirements for the Lower 700 MHz spectrum. CMAs, EAs, and REAGs all cover the exact same area, *i.e.*, they all cover the United States. Dallas is in a CMA no more and no less than it is in an REAG as are the rural areas around it. Yet, the Commission suggests that only licenses based on CMAs and EAs "are well-suited for providing service in rural markets." *Order* ¶ 158. Licenses based on CMAs and EAs do facilitate the efficient dissemination of licenses to entities that intend to, and are capable of deploying services to rural areas, and in this way are "well-suited" to providing service in rural areas. 700 MHz REAG licenses also could be "well-suited" to providing service in rural areas *if* the Commission were to adopt policies that encouraged the nationwide or regional licensee(s) to deploy service in rural areas or to work with companies that are willing and able to do so.

In adopting geographic-based requirements for the A, B & E Blocks, the Commission touted the "band's excellent propagation characteristics [that] make it ideal for delivering advanced wireless services to rural areas." *Order* ¶ 158 (footnote omitted). The C Block, however, also has just as excellent propagation characteristics. The C Block is not somehow "less ideal" for providing service for rural areas.

In the *Order*, the FCC stated that it was "mindful" of the significant capital investment and logistical challenges involved in building out a nationwide or regional system in the C Block. Since CMAs and EAs cover the same geographic area as REAGs, however, why would the challenges be any less for building out the A, B, and E Blocks, particularly when the FCC

has imposed significantly greater construction burdens on those blocks? In short, the challenges are no greater on the C Block licenses than on the collective CMA and EA block licenses, and are in reality, less.

The FCC's other arguments for imposing population instead of geographic benchmarks on the C Block licenses are similarly questionable. The FCC purported to adopt population rather than geographic benchmarks to allow C Block licensees to "achieve the economies of scale needed for a viable business model." *Order* ¶ 164. Wouldn't requiring deployment to more of the population (through stricter geographic construction requirements) achieve greater economies of scale rather than fewer?

In brief, the Commission has not explained why the C Block is any less suited for rural deployments or why C Block licensees should not be subject to the geographic-based requirements which the FCC acknowledged will be effective in promoting the deployment of service to rural areas.

C. Adopting Geographic-Based Requirements for the C Block Will Promote the Delivery of Service to Rural Areas and Serve the Public Interest

Rather than giving the C Block licensee(s) a "pass" and relegating rural areas to "unserved" status for C Block-based services, the Commission should impose geographic construction requirements on the C Block consistent with the requirements for the Lower 700 MHz licenses. This will result in one of three possible results. First, if a C Block licensee values an area enough, it may actually provide service to such area. Second, if a C Block licensee does not want to build out a particular area, it may work with a third-party that does. Third, if neither of the forgoing occur, then the area will be available for unserved area licensing. Each of these results is a desirable outcome.

It is critical for the Commission to recognize that what is really at issue here is not the loss of the C Block licensee's entire license. Under the "keep-what-you-use" rules, unlike in

PCS, if the C Block licensee does not meet its geographic benchmark, it only loses the areas to which it does not provide service. These areas become available for licensing by any entity that does desire to provide service.

Accordingly, adopting the same geographic-based standards for the C Block as well as the A, B and E Blocks will encourage the deployment of service to rural areas as well as opportunities for small businesses and rural telephone companies to participate in the provision of service.

D. The Commission Should Not Subject Licensees Failing to Meet Construction Benchmarks to Additional Sanctions Beyond the "Keep-What-You-Use" Licensing Scheme

In the *Order*, the Commission suggested that it may subject licensees that fail to meet applicable construction benchmarks to additional enforcement action or proportional loss of license area. The Commission, however, provided no guidance regarding what circumstances would trigger this action. This creates unnecessary ambiguity and risk and may deter many small businesses from participating in the Auction because of the unquantifiable exposure. To remedy this situation, the Commission should revise its requirements to provide licensees with clarity. A licensee should not be subject to additional enforcement action unless it utterly fails to construct a system. Absent such egregious behavior, a licensee should not be subject to additional enforcement action.

III. CONCLUSION

For the reasons discussed above, the Commission should revise its performance obligations to require licensees of C Block spectrum to meet geographic-based benchmarks. The Commission also should not subject a licensee to additional enforcement action for failing to meet the applicable benchmarks.

Respectfully submitted,

RURAL TELECOMMUNICATIONS GROUP, INC.

By: *_/s/ Greg Whiteaker*_____

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Date: September 24, 2007

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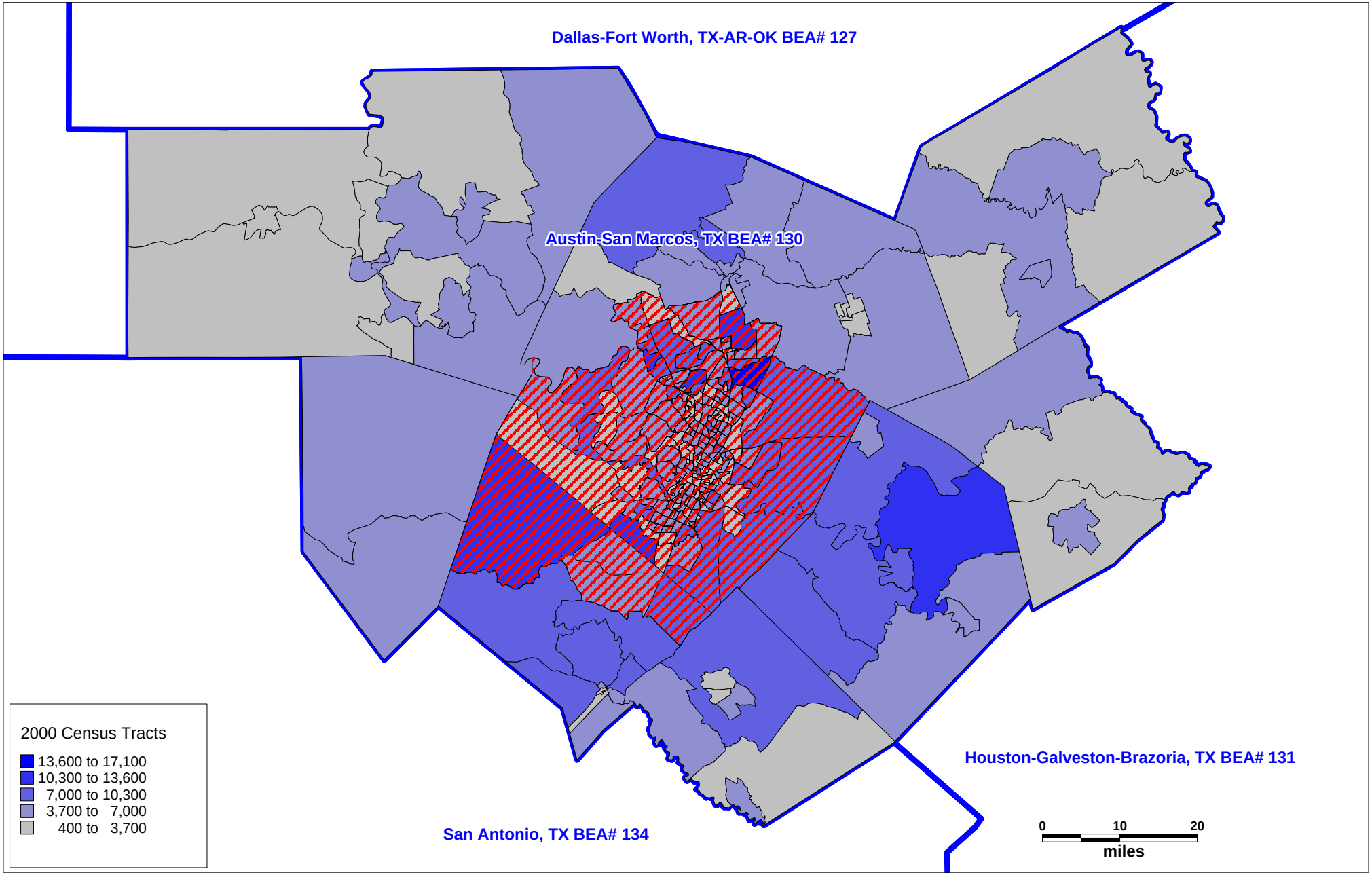
Coverage Needed to Cover 75 Percent of Austin-San Marcos, TX BEA Market Population

Attachment 1



September 21, 2007

Coverage

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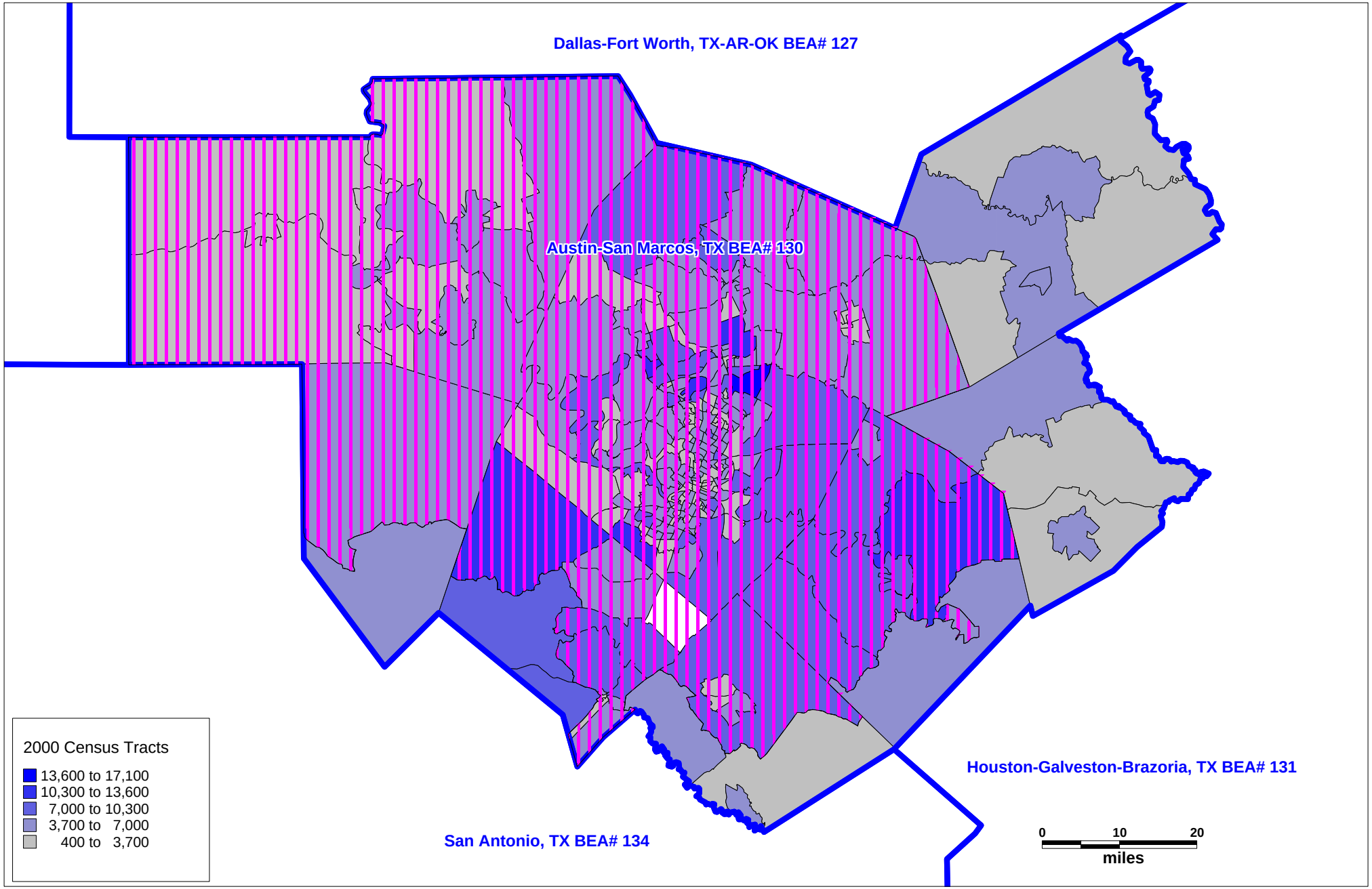
Coverage Needed to Cover 70 Percent of the Geographic Areas of Austin-San Marcos, TX BEA Market

Attachment 2



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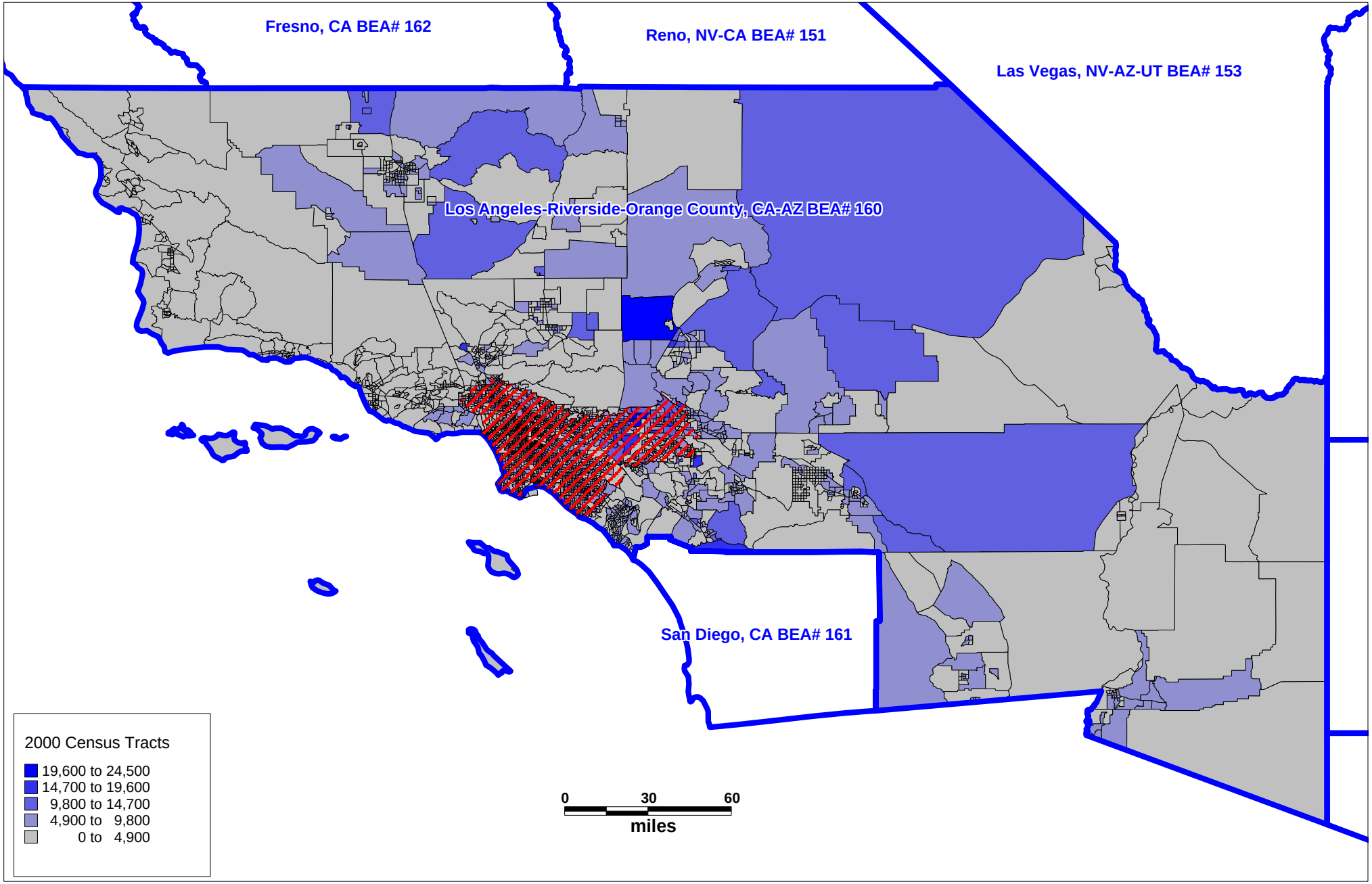
Coverage Needed to Cover 75 Percent of Los Angeles-Riverside-Orange County, CA-AZ BEA Market Population

Attachment 3



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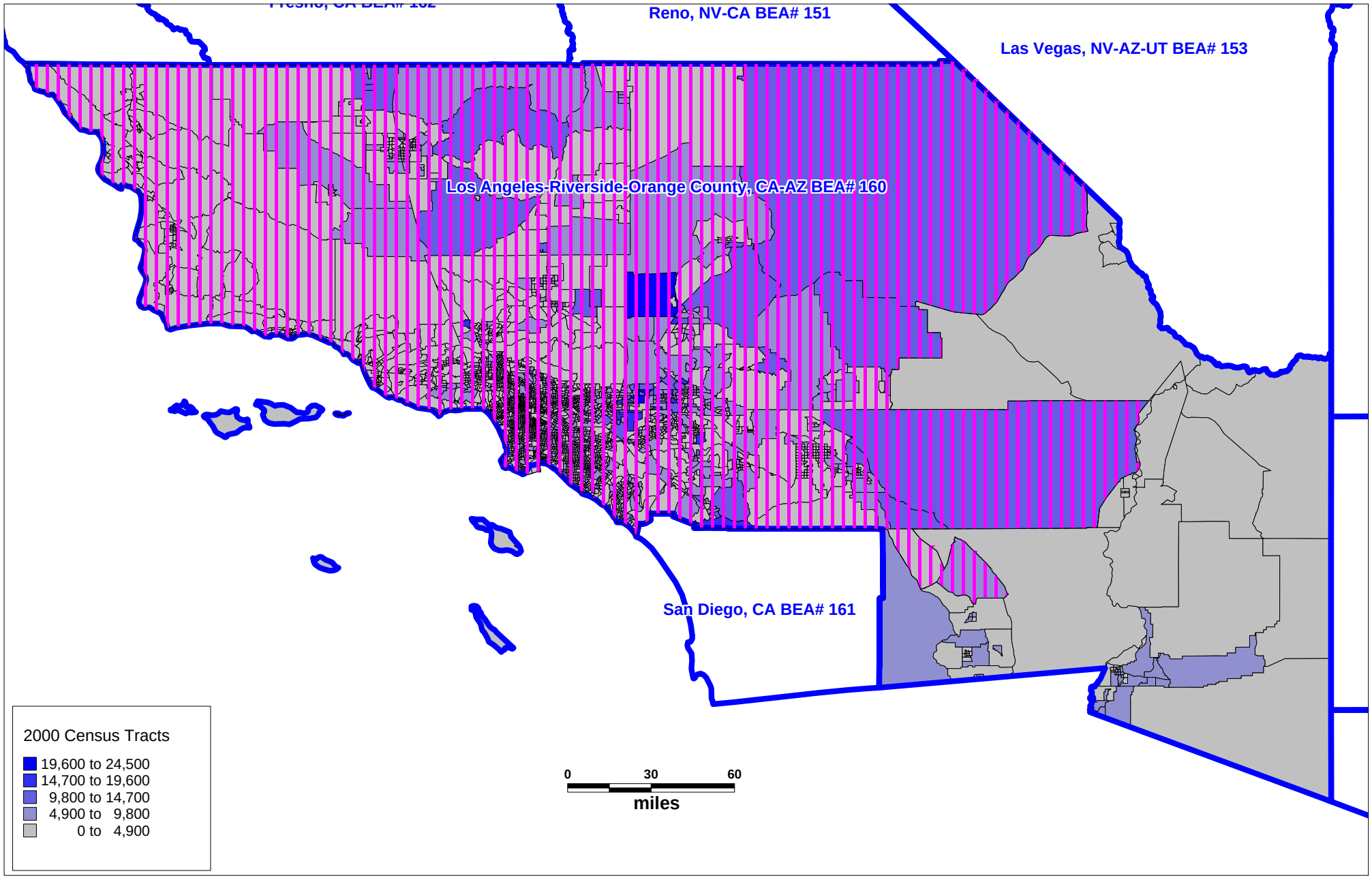
Coverage Needed to Cover 70 Percent of the Geographic Areas of Los Angeles-Riverside-Orange County, CA-AZ BEA Market

Attachment 4



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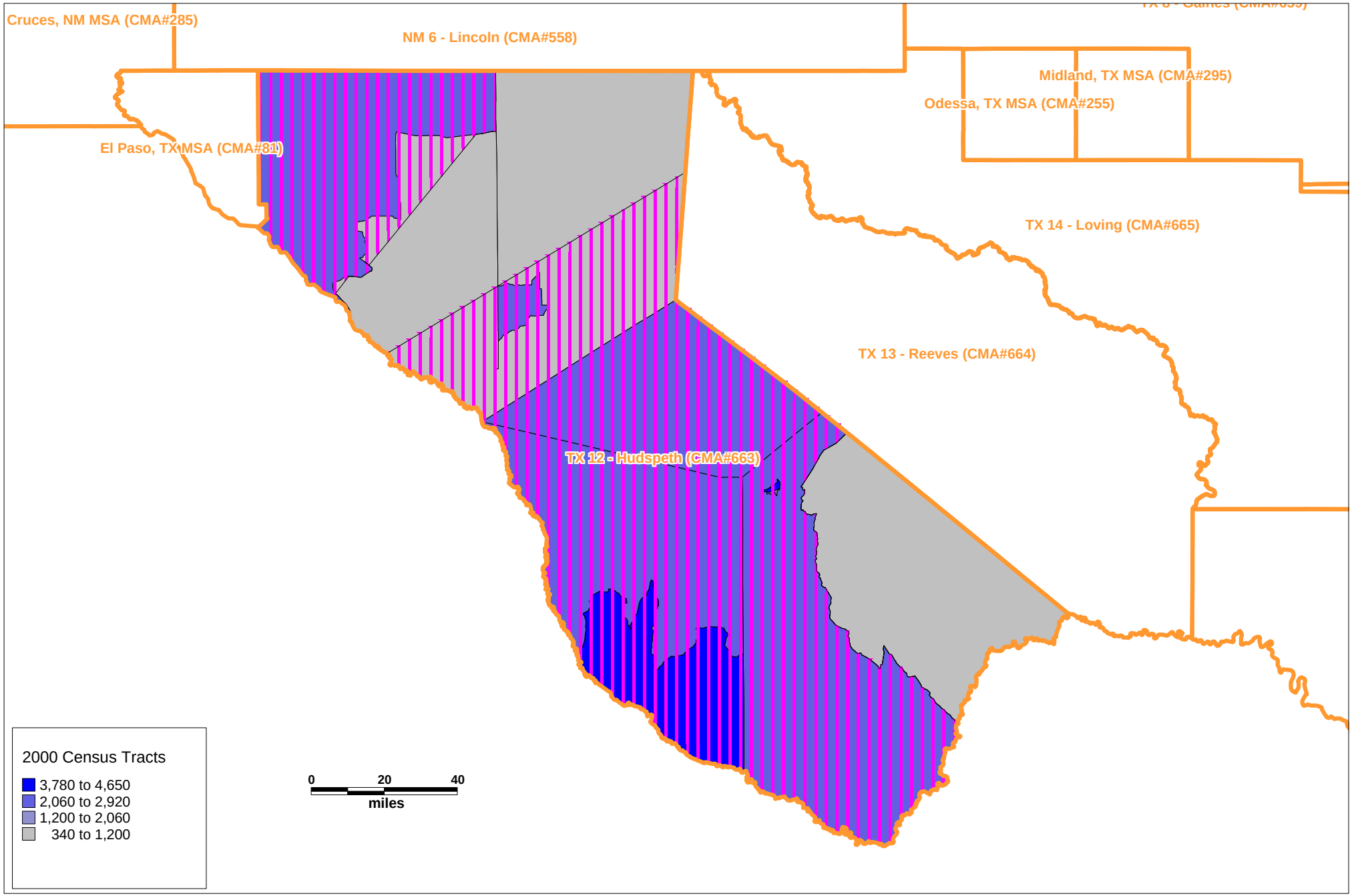
Coverage Needed to Cover 70 Percent of the Geographic Areas of TX12 RSA Market

Attachment 5



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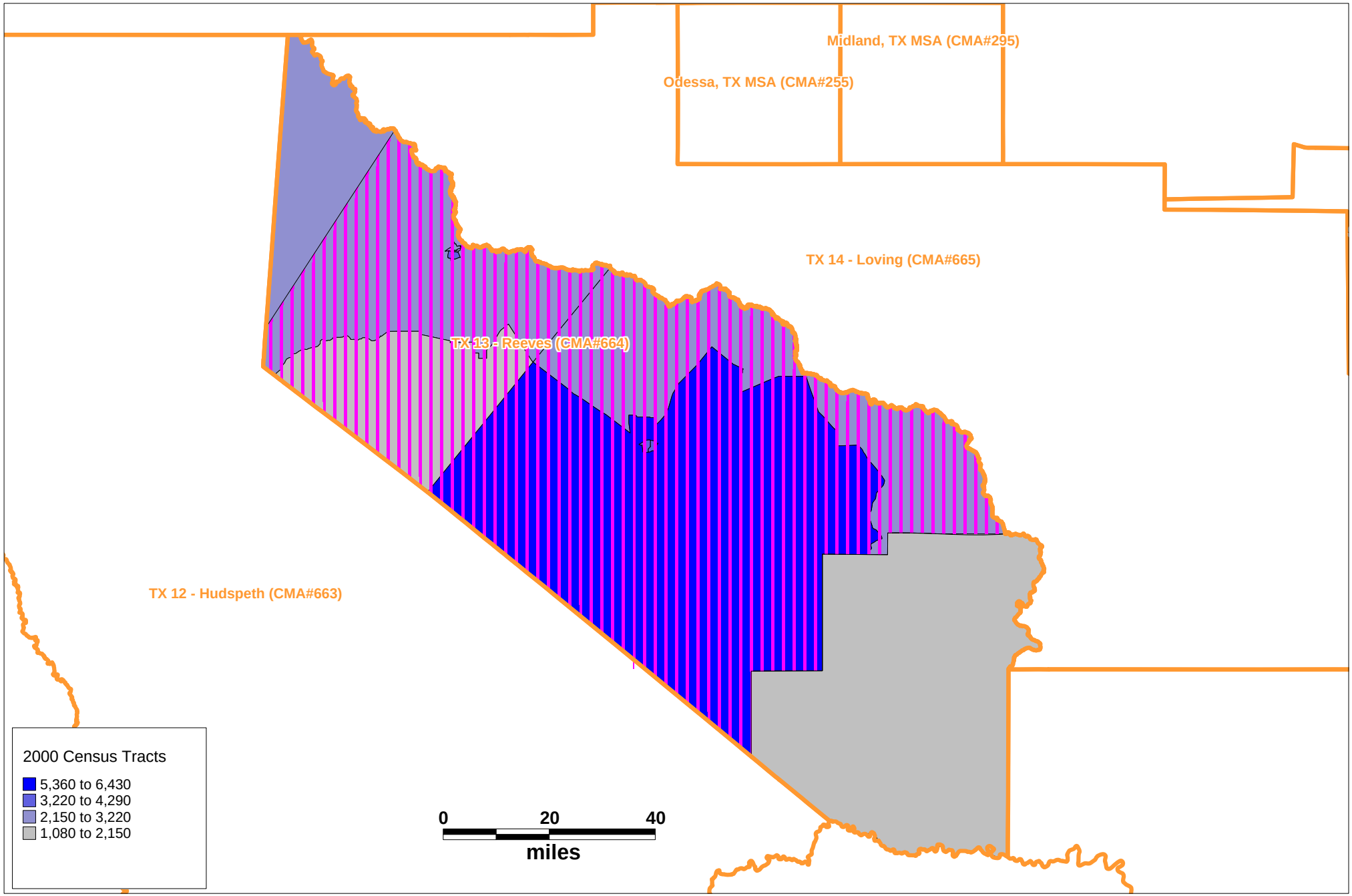
Coverage Needed to Cover 70 Percent of the Geographic Areas of TX13 RSA Market

Attachment 6



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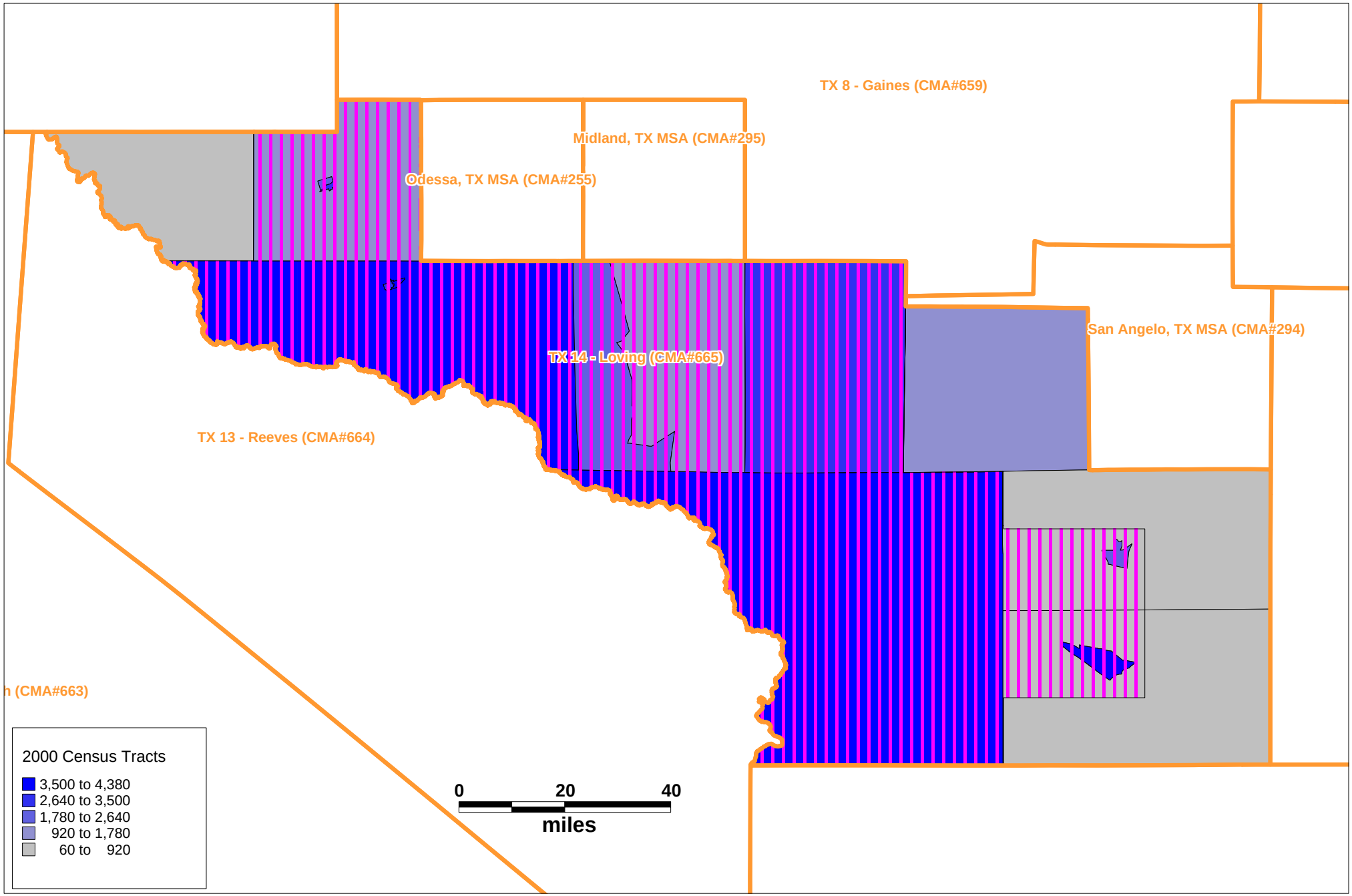
Coverage Needed to Cover 70 Percent of the Geographic Areas of TX14 RSA Market

Attachment 7



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