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April 15, 2013

**VIA Electronic Filing**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20054

**Re:** In re Applications of Sprint Nextel Corporation for Consent to Transfer of Control  
IB Docket 12-343

Dear Ms. Dortch:

The Consortium for Public Education and The Roman Catholic Diocese of Erie, Pennsylvania (collectively “the EBS Licensees”), filed their Petition to Deny in this proceeding on January 28, 2013.<sup>1</sup> Among other requests made in their filings in this proceeding, the EBS Licensees requested the Commission require the applicants to provide complete current details concerning their joint spectrum holdings, and that the Commission include all 2.5 GHz spectrum in its spectrum screen for purposes of its mandatory public interest review of this proceeding.<sup>2</sup> The EBS Licensees hereby supplement their earlier filings to respond to additional information that has since been introduced by the applicants.<sup>3</sup>

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<sup>1</sup> The EBS Licensees also filed Comments on February 12, 2013 (“Comments”), and a Consolidated Reply to Oppositions on February 25, 2013 (“Reply”), in this proceeding.

<sup>2</sup> See Comments at page 7; Reply at pages 2, 14-15.

<sup>3</sup> Although not discussed in this letter, on April 15, 2013, Dish Network, which is already pursuing an acquisition of Clearwire spectrum in competition with Sprint’s offer, also made a competing proposal for a merger with Sprint for \$25.5 billion, touting an important aspect of that proposed transaction as Clearwire’s substantial spectrum holdings. See <http://completedishsolution.com/assets/uploads/2013/04/Project-Wavelength-Investor-Presentation.pdf>, page 10.

## **The Sprint 2.5 GHz Spectrum Paper**

Sprint recently released a paper entitled, “Value and Utility of the U.S. 2.5 GHz Spectrum Band,” by Dr. Kostas Liopiros, dated February 27, 2013 (“Sprint Paper”).<sup>4</sup> Because the Sprint Paper was unavailable before reply comments were due in this proceeding, the EBS Licensees are compelled to react to certain gross misrepresentations in that document concerning the value and utility of EBS spectrum.<sup>5</sup>

The Sprint Paper claims EBS spectrum is inferior to BRS (and other) spectrum from a technical, value and utility standpoint, and purports to illustrate this claimed inferiority through misleading illustrations of select EBS spectrum licensed in two major U.S. metropolitan areas: Dallas-Ft. Worth, TX, and St. Louis, MO.<sup>6</sup> Among other gross inaccuracies, the Sprint Paper claims that EBS is inferior because it is leased and not owned, and because the “geographic” coverage of EBS inside BTAs (and nationally) does not cover the same territory as BRS.<sup>7</sup> In analyzing the Dallas-Ft. Worth, TX, and St. Louis, MO BTAs in this respect, the Sprint Paper concludes, “The *coverage* afforded by all of the available C1 channels in the Fort Worth BTA is greater than 80 percent, but the *coverage* afforded by all of the available A1 channels in the St. Louis BTA is less than 50 percent.”<sup>8</sup> (emphasis added)

These are simply preposterous claims and do not take into consideration that Clearwire already has the vast majority of nationwide 2.5 GHz EBS spectrum under its control through long term, 30 year *de facto* leases, containing strong post termination rights of first refusal and other similar renewal rights in Clearwire’s favor. These long term leases are considered to be the financial equivalent of ownership of the spectrum.

The Sprint Paper also ignores the fact that the EBS channels Clearwire controls in the vast majority of BTAs cover the vast majority of population in those BTAs (and in aggregate the United States), thereby giving Clearwire (or any other wireless operator that has this spectrum) more than ample spectrum population coverage right now to provide commercial mobile data

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<sup>4</sup> K. Liopiros, Sun Fire Group, February 27, 2013, available at [http://newsroom.sprint.com/article\\_display.cfm?article\\_id=2528](http://newsroom.sprint.com/article_display.cfm?article_id=2528)

<sup>5</sup> Crest Financial Limited also recently filed a supplemental paper in this proceeding by former Commissioner Harold Furchtgott-Roth disputing the conclusions of the Sprint Paper. See Letter from Viet D. Dinh to Marlene H. Dortch, dated April 8, 2013.

<sup>6</sup> See Sprint Paper at pages 8-12. It should be noted the Sprint Paper, at pages 6-7, also completely and inaccurately mischaracterizes the current licensing status of BRS spectrum in failing to indicate that Clearwire has cancelled nearly all their site licensed BRS channels and dissolved them into BTAs. See Reply at page 7, footnote 18.

<sup>7</sup> Sprint Paper at pages 1-3, 9-12.

<sup>8</sup> Id. at page 11.

services over any one of its 5 national EBS channel groups under lease (in almost every U.S. market).<sup>9</sup>

In complete contradiction of the patently misleading conclusion of the Sprint Paper regarding the respective percentages of “coverage afforded by all available” EBS channels in the BTAs analyzed, as is conclusively demonstrated in greater detail below, the aggregate “coverage” Clearwire alone has on C1 EBS channels it leases that include geographic coverage inside the Dallas-Fort Worth, TX BTA, covers 97.5% of the 2010 BTA population. For the A1 EBS Channels Clearwire controls that have geographic coverage inside the St. Louis, MO BTA, the population coverage is 83% of the 2010 BTA population.<sup>10</sup>

It is extremely disingenuous that the Sprint Paper is completely devoid of and ignores the single most important value and utility factor of prime spectrum to an operator (which surely includes Sprint) – population coverage – which calls into question the entire validity of the paper. In fact, there is not a single instance in the entire body of the Sprint Paper of the word “population” as if to suggest it completely irrelevant to an analysis of spectrum.<sup>11</sup>

The illustrations and data at Exhibits 1-2 hereto accurately show the very substantial population coverage Clearwire has right now on all EBS spectrum it controls in the Dallas-Ft. Worth, TX and St. Louis, MO BTAs cited in the Sprint Paper, including providing an EBS channel by channel group analysis of Clearwire’s holdings in each BTA, and the 2010 population coverage of each such EBS channel group inside each BTA, as compared to the total 2010 BTA population.

The EBS channels per channel group Clearwire controls in these two BTAs can be summarized as follows:<sup>12</sup>

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<sup>9</sup> The EBS Licensees explained in their Reply that the EBS channels cover the vast majority of population of each market area, such that any operator (including Clearwire) can use the channels right now on a local, regional or national basis to provide robust and ubiquitous coverage and substantial additional capacity over a wireless system. See Reply at page 8, footnote 19, page 17, and footnote 50.

<sup>10</sup> These numbers accurately demonstrate the indisputable and actual channel coverage available to Clearwire (and that Clearwire controls) in these BTAs, and does not even account for other potentially available EBS coverage in the BTAs that is either unlicensed white space (which may ultimately be granted to EBS licensees leasing to Clearwire), that is not currently leased, or that is leased to another operator – all of which spectrum currently unavailable to Clearwire in aggregate is inconsequential to the ability of Clearwire (or any other operator) to deploy commercial mobile data services on the EBS channels currently controlled by Clearwire in these BTAs.

<sup>11</sup> The word population is only mentioned once in footnote 37 of the Sprint Paper in an unrelated discussion about the 2010 U.S. population.

<sup>12</sup> Maps illustrating Clearwire’s actual EBS coverage per EBS channel group it leases in these BTAs are included at Exhibit 1 and the raw data for all EBS channels with geographic coverage within these BTAs supporting this analysis is included at Exhibit 2.

**Sprint-CLWR Coverage Summary for B394, St. Louis and B101, Dallas Ft. Worth**

BTA	Channel	Intra BTA Population Coverage	% Intra BTA pop coverage
B394	A Group	2,665,985	82.81%
B394	B Group	2,665,985	82.81%
B394	C Group	2,701,336	83.91%
B394	D Group	2,662,034	82.69%
B394	G1, G2	2,658,954	82.59%
B394	G3, G4	2,658,954	82.59%

BTA	Channel	Intra BTA Population Coverage	% Intra BTA pop coverage
101	A1, A2	4,442,533	62.62%
101	A3, A4 <sup>13</sup>	4,442,533	62.62%
101	B1, B2	6,823,003	96.18%
101	B3, B4	6,823,003	96.18%
101	C1	6,918,311	97.52%
101	C2	6,918,311	97.52%
101	C3, C4	6,756,156	95.23%
101	D1, D2, D3	5,992,719	84.47%
101	D4	5,799,965	81.76%
101	G1, G2, G3	6,543,229	92.23%
101	G4	6,543,229	92.23%

This data demonstrates that the EBS spectrum coverage (including population coverage) available on a long term basis to Clearwire within the BTAs analyzed in the Sprint Paper is very substantial and more than ample such that for all intents and purposes the EBS spectrum has the same value and utility as BRS and other prime broadband spectrum, and the spectrum would have the same value and utility to any other operator to whom any of Clearwire’s national or regional 2.5 GHz EBS channel groups is available.<sup>14</sup> Regardless of the applicant's claims, and as the EBS Licensees have represented in this proceeding, there is no real and discernible difference between EBS and BRS for purposes of this transaction and/or the Commission’s spectrum screen. This conclusion is now fully validated by the fact that on April 8, 2013, Clearwire

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<sup>13</sup> Clearwire does not lease the EBS A group channels for Fort Worth, TX (WHR506), which explains the resultant lower population coverage Clearwire has on the B101 A group EBS channels versus all other EBS channel groups in the BTA. WHR506 is currently leased to Nextwave Holdco LLC but the lease is available for acquisition by Clearwire or any other interested party.

<sup>14</sup> Although the EBS Licensees have not reviewed all U.S. BTAs for Clearwire’s total EBS spectrum population coverage as here, it is reasonable to assume a full national study would produce substantially similar results.

received an unsolicited proposal from a strategic buyer reported to be Verizon Wireless for the purchase of Clearwire EBS spectrum leases for spectrum “generally located in large markets.”<sup>15</sup>

### **The Clearwire Spectrum Chart**

On March 26, 2013, Clearwire unilaterally filed “a table showing Clearwire’s current holdings in the 2.5 GHz band and its holdings in 2008 when the Commission approved the Sprint-Clearwire transaction.”<sup>16</sup> The cover letter filed with the table explains “[t]he analysis was conducted using the same methodology and assumptions described in FCC Form 603 Exhibit 1, Appendix E associated with the 2008 Sprint and Clearwire license transfer applications.”<sup>17</sup>

The 2008 methodology Clearwire indicates applies to the current Clearwire Spectrum Chart is seriously flawed and leads to grossly inaccurate representations of Clearwire’s current spectrum holdings for purposes of this transaction. First, the analysis does not take into consideration any of Sprint’s current spectrum holdings that must be evaluated along with Clearwire’s. Second, the 2008 methodology now being re-employed in this proceeding employs a county by county analysis attributing site licensed spectrum to a county based on a centroid calculation developed by Clearwire in 2008 for all its 2.5 GHz spectrum holdings.<sup>18</sup> While this methodology may be useful to evaluate BRS BTAs (although now inapplicable to Clearwire’s BRS spectrum considering Clearwire dissolved nearly all its BRS site licenses into BTAs), the approach completely and confusingly misrepresents the massive amount of EBS spectrum population coverage Clearwire has today in each national EBS channel group (and within BTAs and counties).

At minimum, Clearwire should be required to provide, and the Commission should review in order to accurately conduct its public interest analysis in this proceeding, detailed BTA

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<sup>15</sup> See Clearwire Preliminary Proxy Statement, Amendment No. 3, filed with the Securities and Exchange Commission, April 12, 2013, at 38. On April 15, 2013, the Wall Street Journal reported that Verizon Wireless is the strategic buyer which made the proposal for up to \$1.5 billion of spectrum leases. See [http://online.wsj.com/article/SB10001424127887324345804578424514105025922.html?mod=googlenews\\_wsj](http://online.wsj.com/article/SB10001424127887324345804578424514105025922.html?mod=googlenews_wsj)

<sup>16</sup> Ex Parte Presentation of Clearwire Corporation, filed March 26, 2013, letter from Angela Y. Kung to Marlene Dortch, at page 1 (“Clearwire Spectrum Chart”).

<sup>17</sup> Id. at footnote 1.

<sup>18</sup> See Sprint Nextel Corporation and Clearwire Corporation, Description of the Transaction and Public Interest Statement, ULS File No. 0003462540 (filed Oct. 31, 2008), *available at* <https://wireless2.fcc.gov/ULSEntry/attachments/attachmentViewRD.jsp?applType=search&fileKey=1826989902&attachmentKey=18317507&attachmentInd=applAttach>.

by BTA information including the total population coverage per license inside each BTA of all EBS channel groups Clearwire controls in each BTA (and County).<sup>19</sup>

While an inaccurate and misleading representation of the very substantial 2.5 GHz spectrum holdings Clearwire has, the Clearwire Spectrum Chart also appears to misreport (and underreport) Clearwire's actual current holdings. For example, Clearwire reports that it controls 141 MHz of 2.5 GHz spectrum covering Houston, Texas. But a simple review of ULS filings for the Houston BRS BTA (B196) and all EBS spectrum licensed for Houston, Texas (including WHR492, WAU31, WHQ281, KRZ68, and WNC208) confirms that Clearwire has the authorization for B196 and has long term *de facto* leases for all EBS spectrum licensed for Houston. Clearwire therefore underreports at least 45 MHz of its actual current 2.5 GHz long term spectrum holdings for Houston, Texas.<sup>20</sup>

The EBS Licensees therefore reiterate their request that the applicants be required to provide further detailed information about their joint spectrum holdings and that the Commission include all 2.5 GHz spectrum in its spectrum screen so a proper and complete public interest analysis may be performed in this proceeding. If such analysis is properly performed as the public interest requires, the Commission should not approve this transaction without, at minimum, requiring substantial spectrum divestitures.

Respectfully submitted,

/s/

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Rudolph J. Geist

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240-821-9850  
*Counsel to the EBS Licensees*

Enclosures

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<sup>19</sup> Exhibit 2 shows an example of the type of data Clearwire should be required by the Commission to provide for each BTA where it leases any EBS spectrum that covers any part of the BTA, including total 2010 BTA population, and total population within each such BTA of all EBS licenses controlled by Clearwire that cover any portion of the BTA. It is only possible to truly evaluate Clearwire's massive EBS spectrum holdings when they are analyzed as a factor of population coverage per EBS group controlled by Clearwire per each BTA as demonstrated herein.

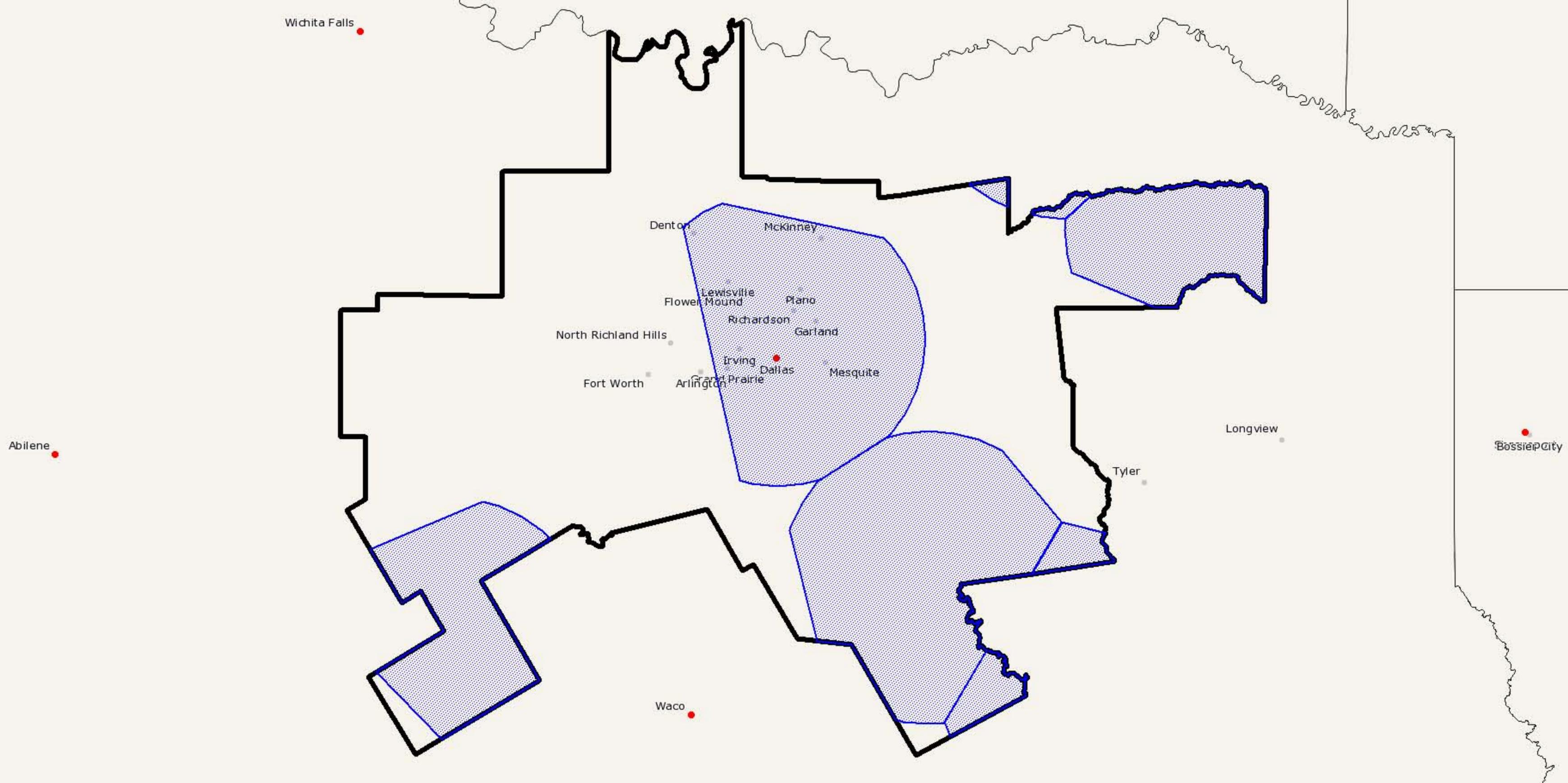
<sup>20</sup> Along with demanding Clearwire provide the additional data regarding its current spectrum holdings as requested by the EBS Licensees, Clearwire should also provide a declaration that any such data is accurate.

cc:

David Krech  
Wayne McKee  
Neil Dellar  
Aaron Goldschmidt  
Paul Murray  
Christopher Sova  
Kathleen Collins

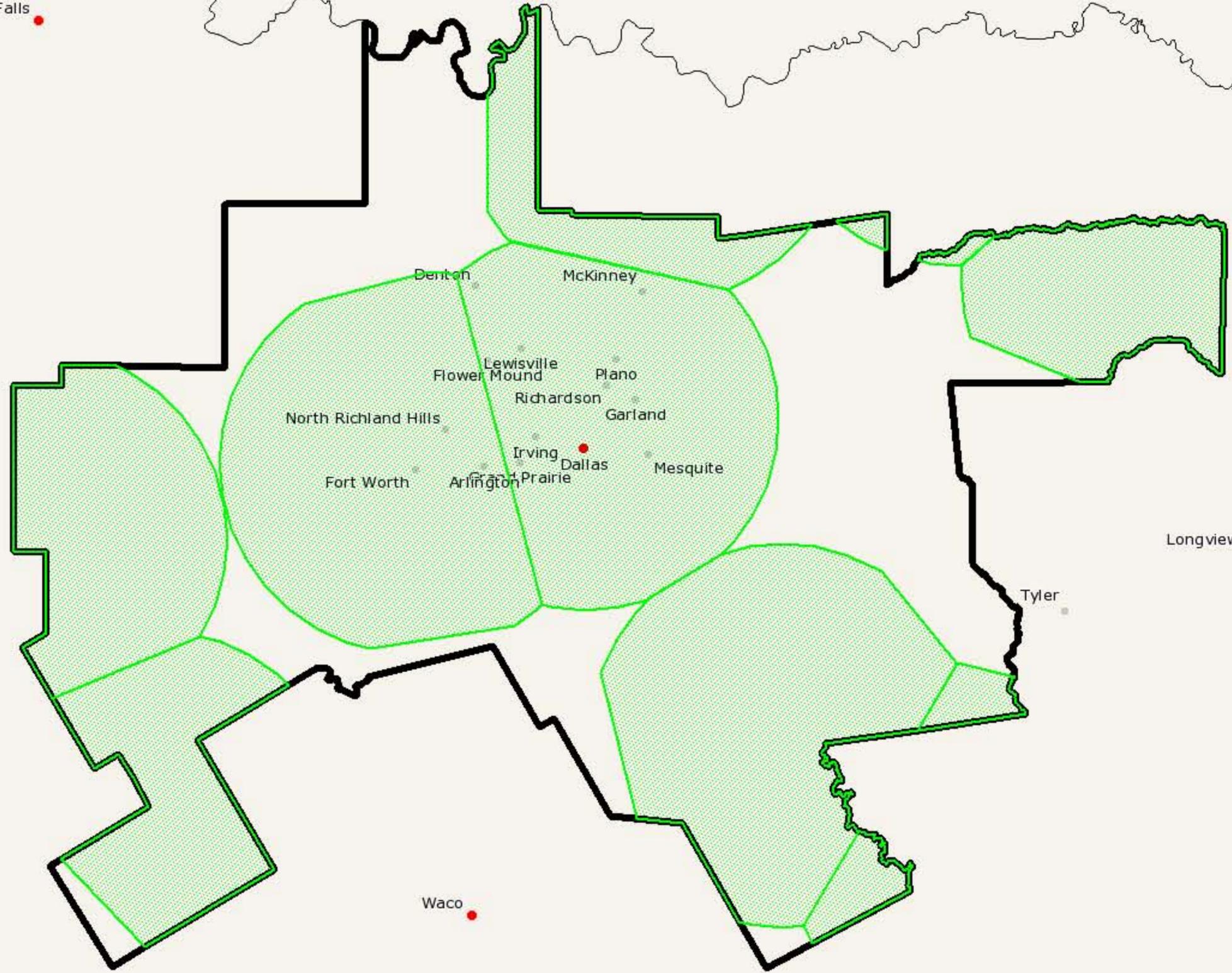
# EXHIBIT 1

Illustrations of Clearwire EBS Coverage in BTAs



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Abilene



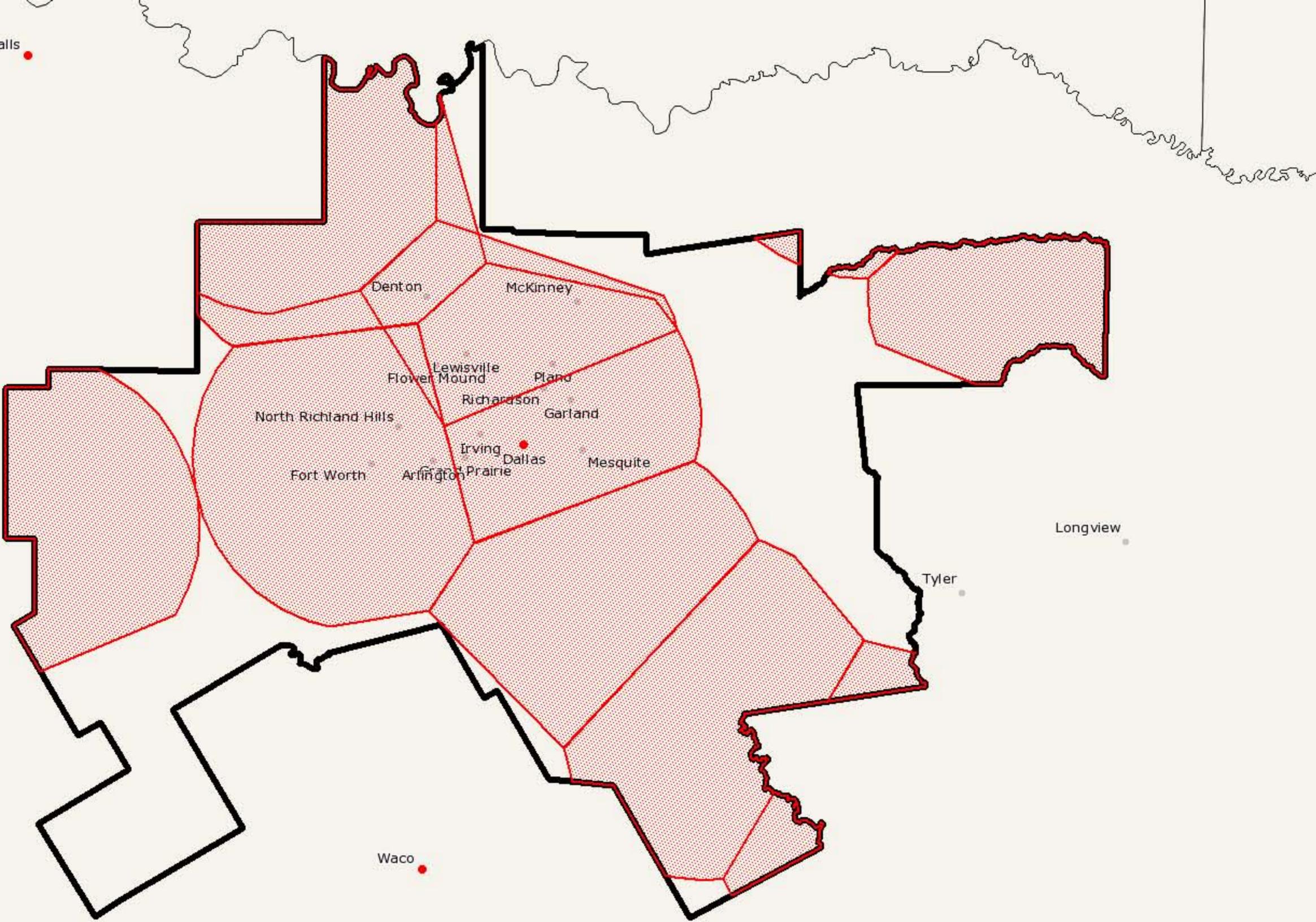
Waco

Tyler

Longview

Bossier City

Wichita Falls



Abilene

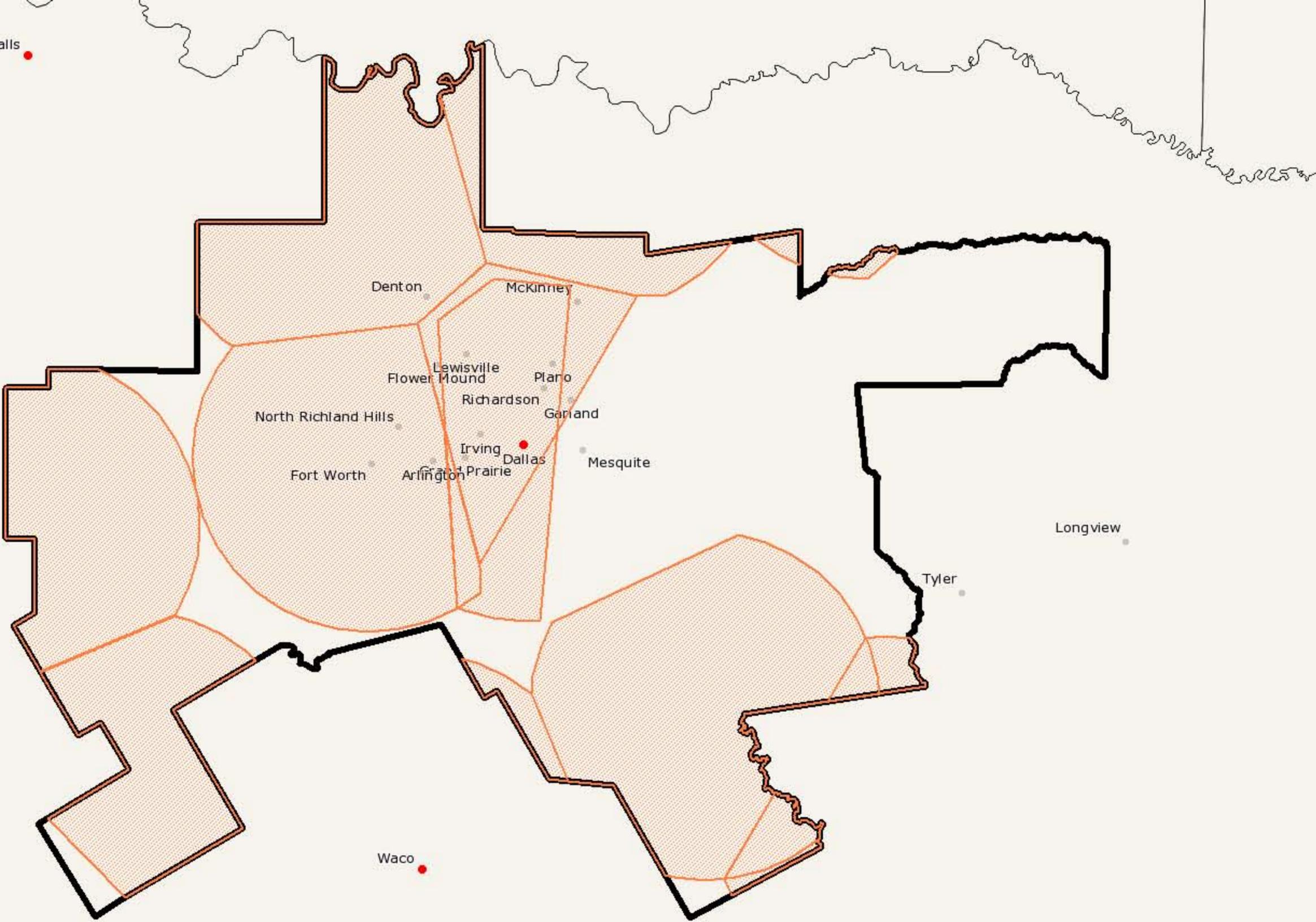
Waco

Tyler

Longview

Bossier City

Wichita Falls



Abilene

Waco

Longview

Bossier City

Tyler

Denton

McKinney

Flower Mound

Lewisville

Plano

North Richland Hills

Richardson

Garland

Fort Worth

Arlington

Irving

Prairie

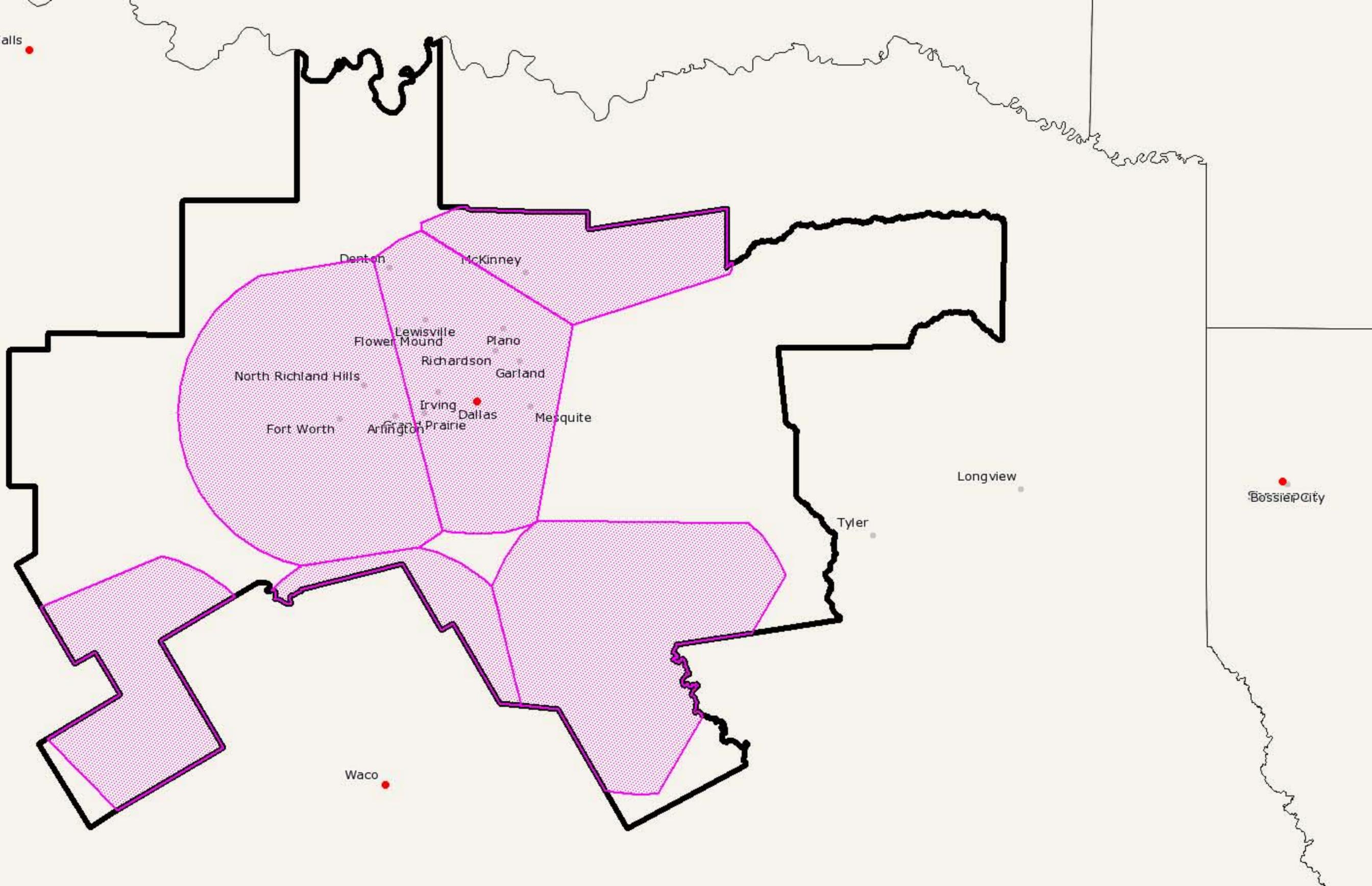
Dallas

Mesquite

Wichita Falls



Abilene



Waco



Tyler

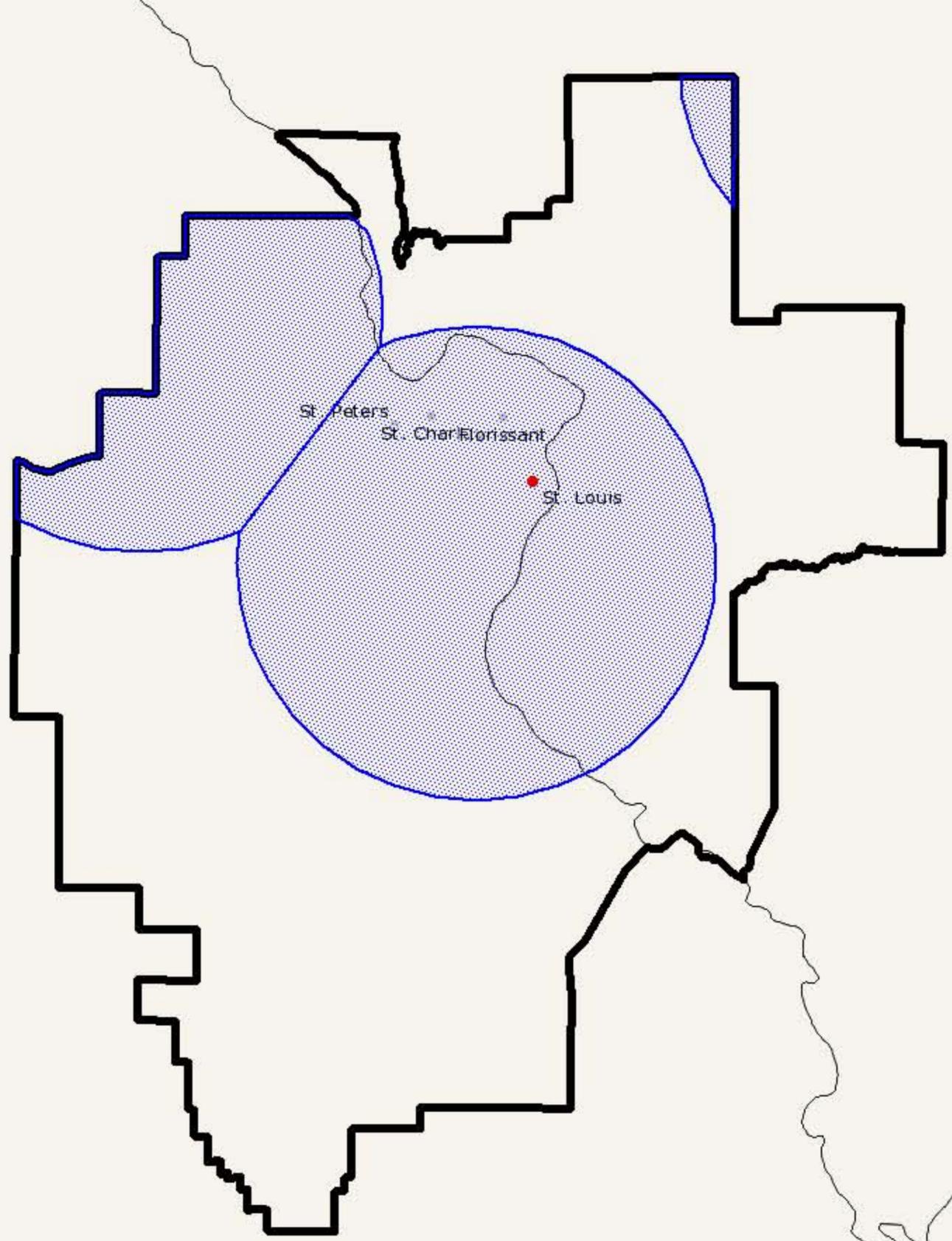
Longview

Bossier City



Springfield

Columbia



St. Peter

St. Charles

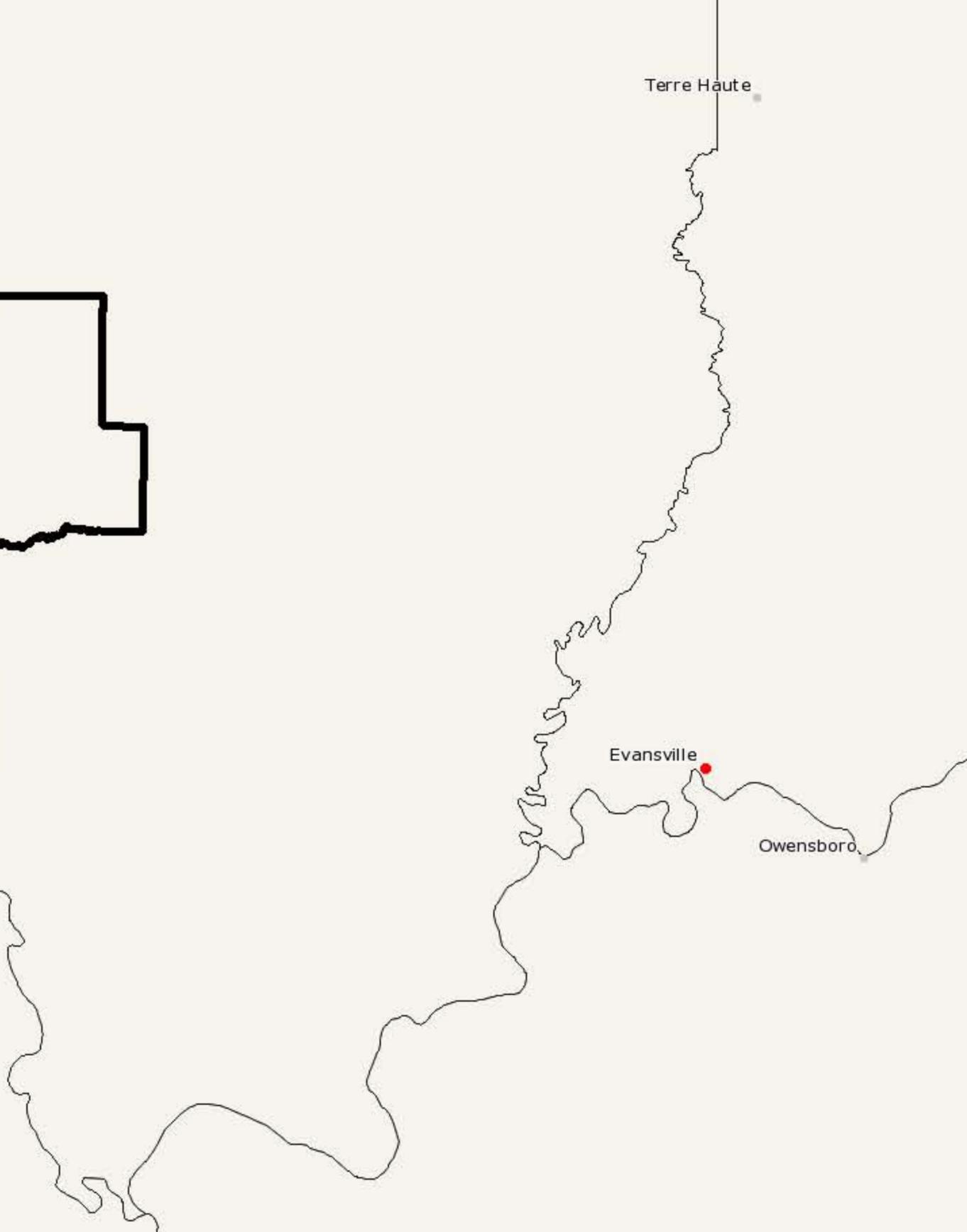
Florissant

St. Louis

Terre Haute

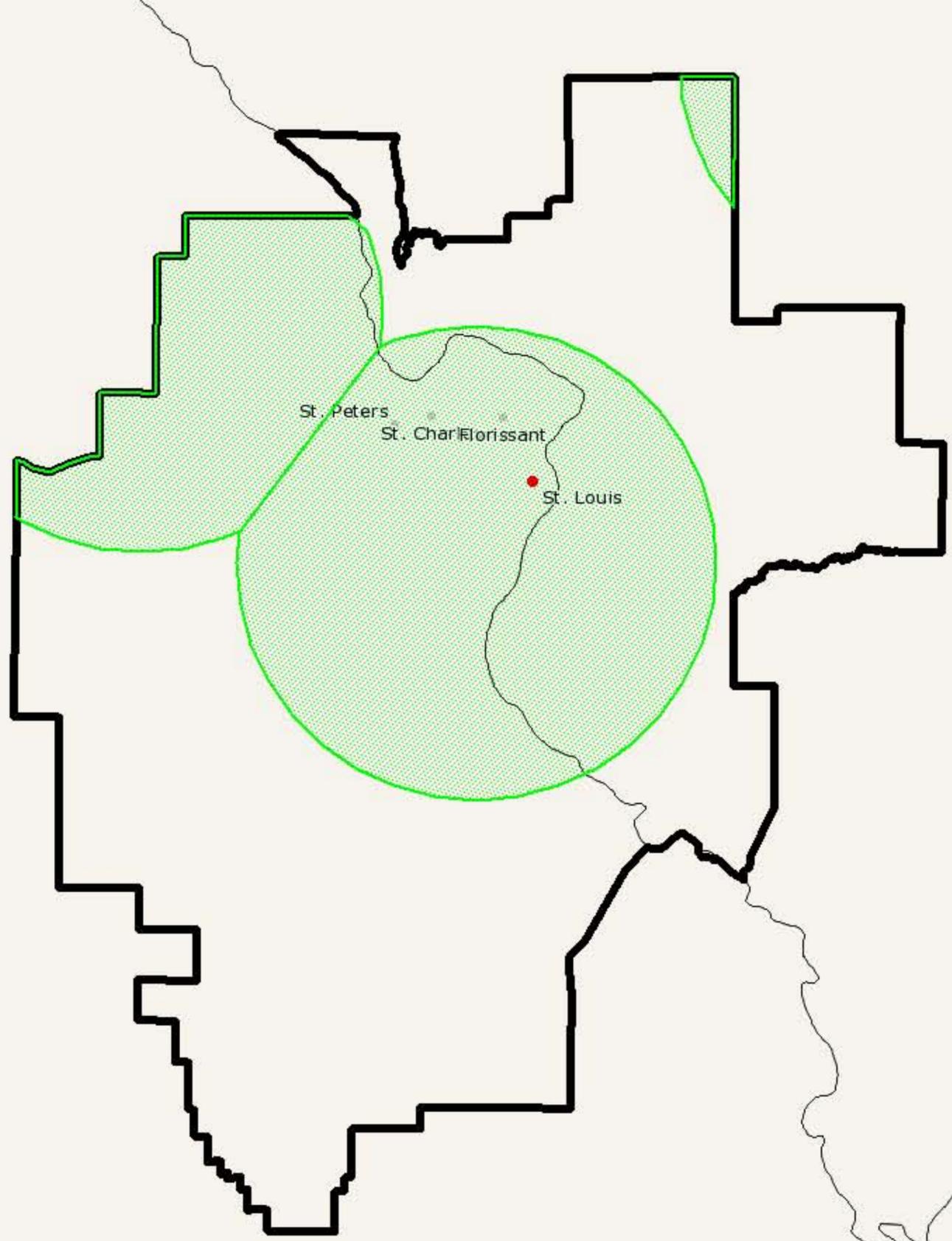
Evansville

Owensboro



Springfield

Columbia

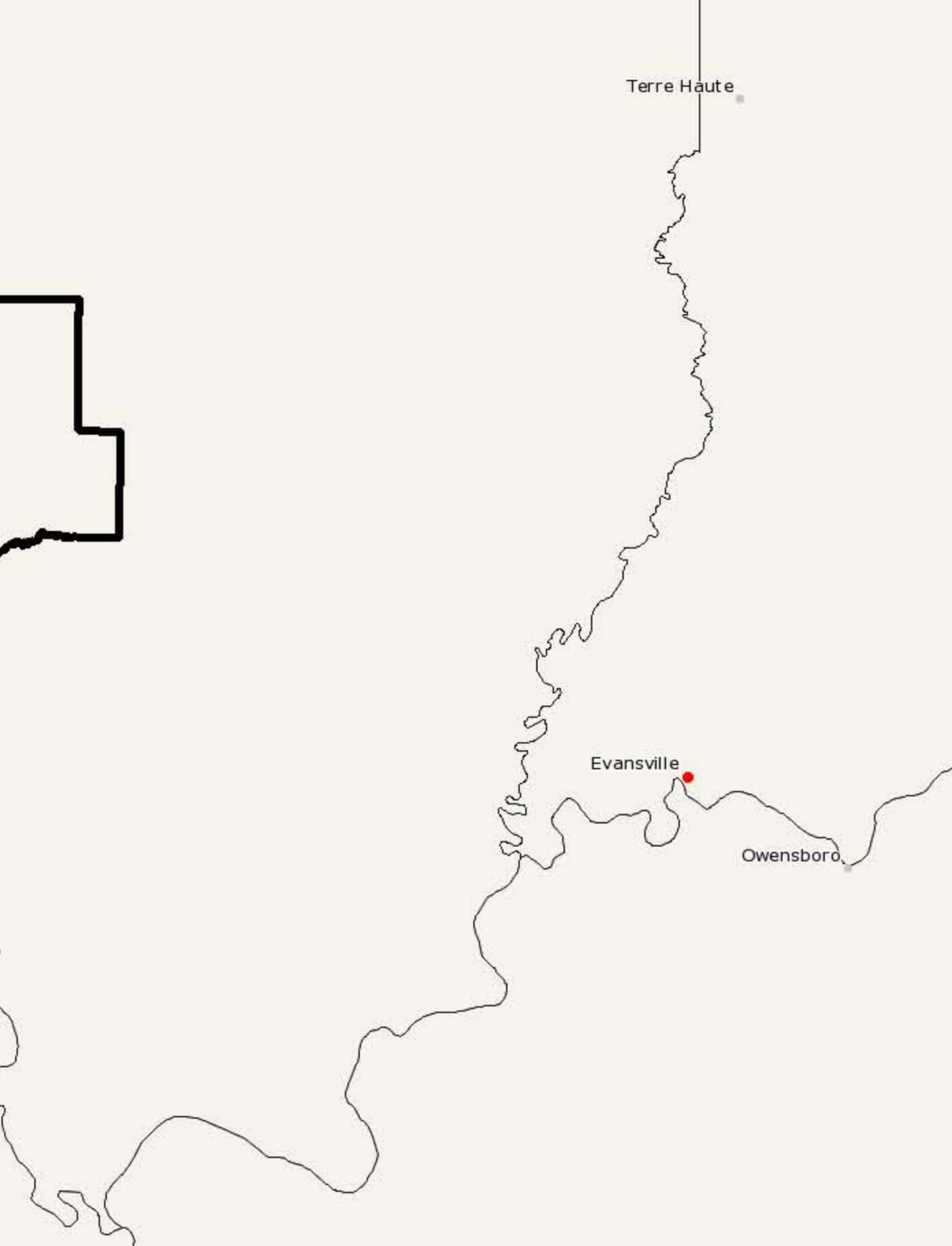


St. Peters  
St. Charles  
Florissant  
St. Louis

Terre Haute

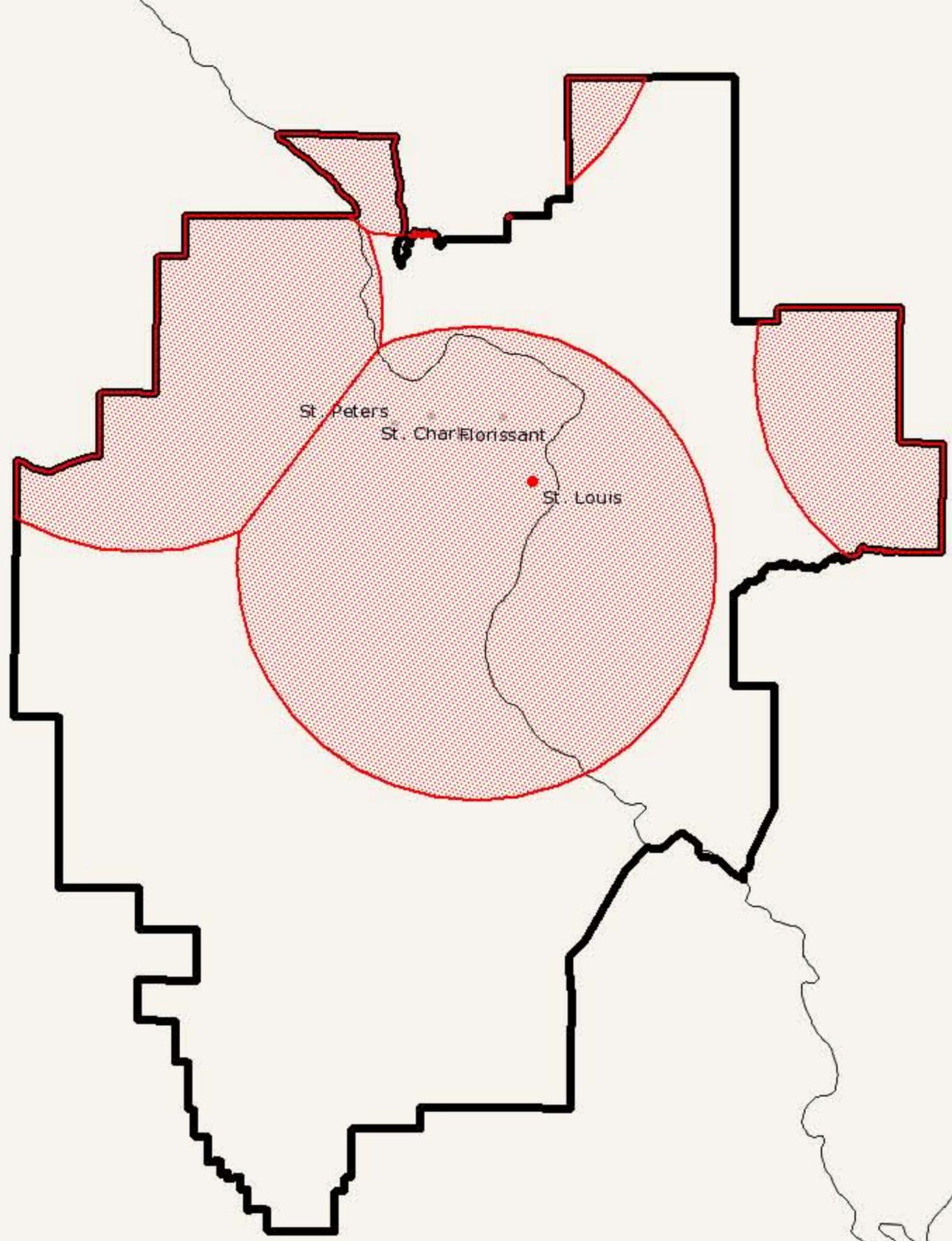
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Owensboro



Springfield

Columbia

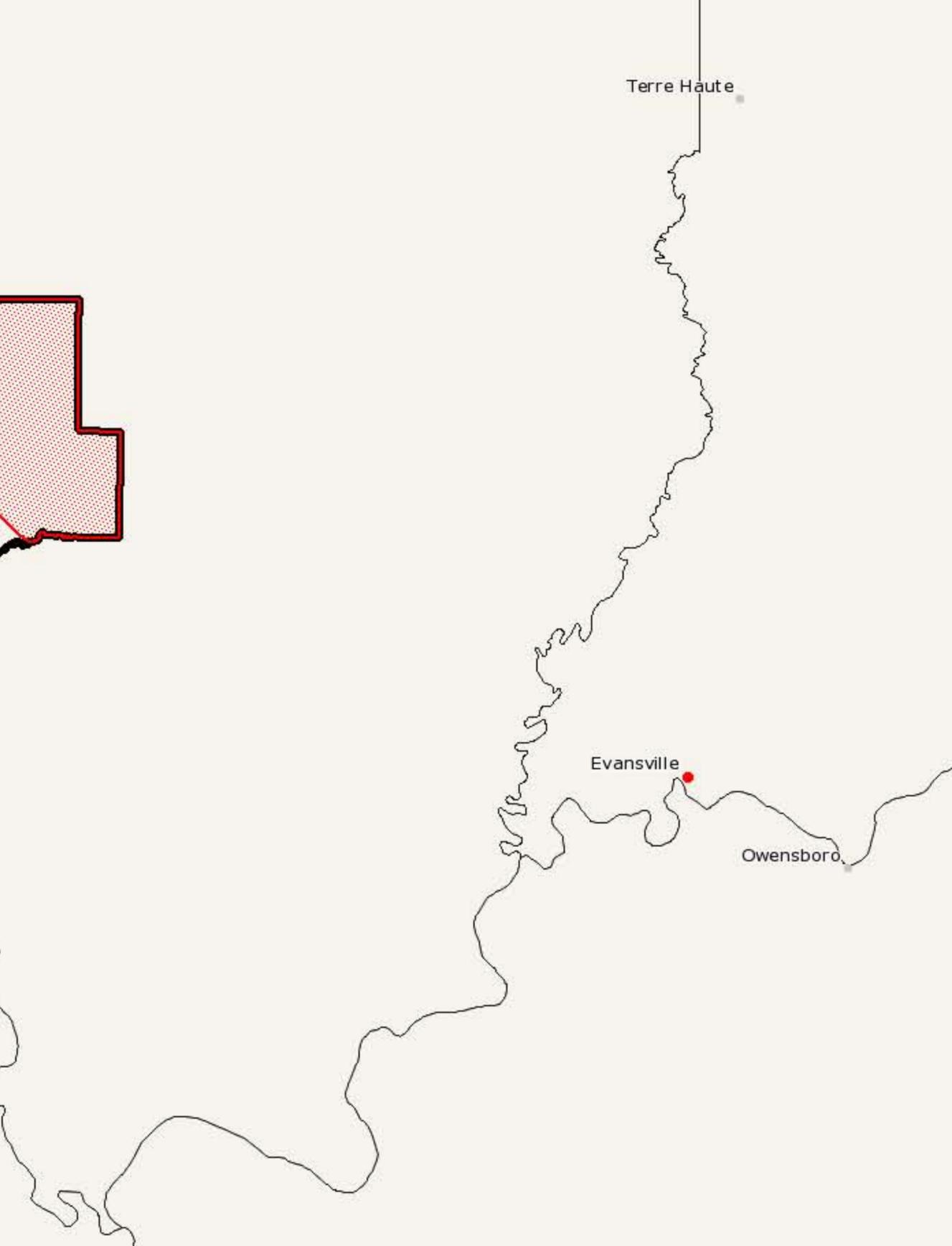


St. Peters  
St. Char Florissant  
St. Louis

Terre Haute

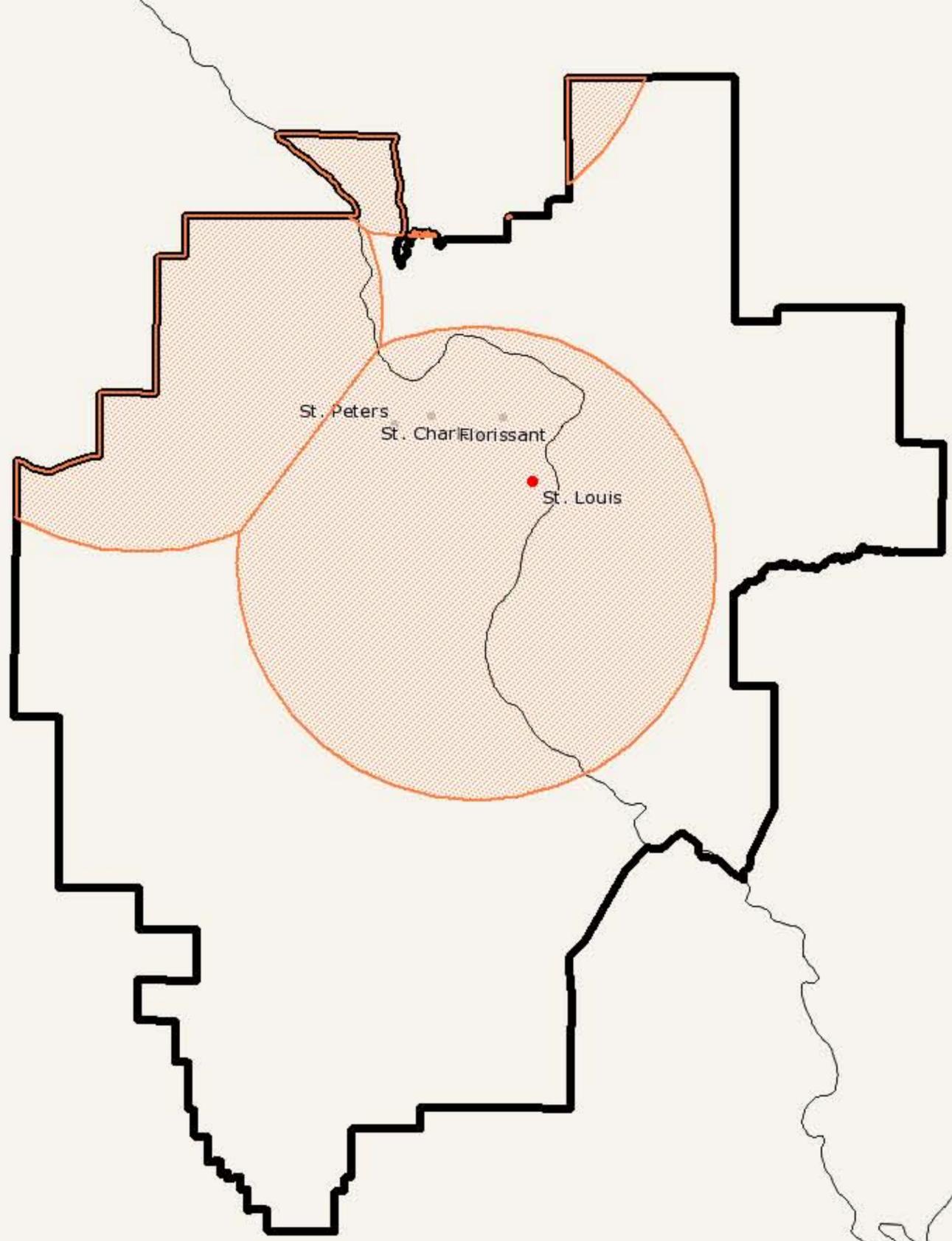
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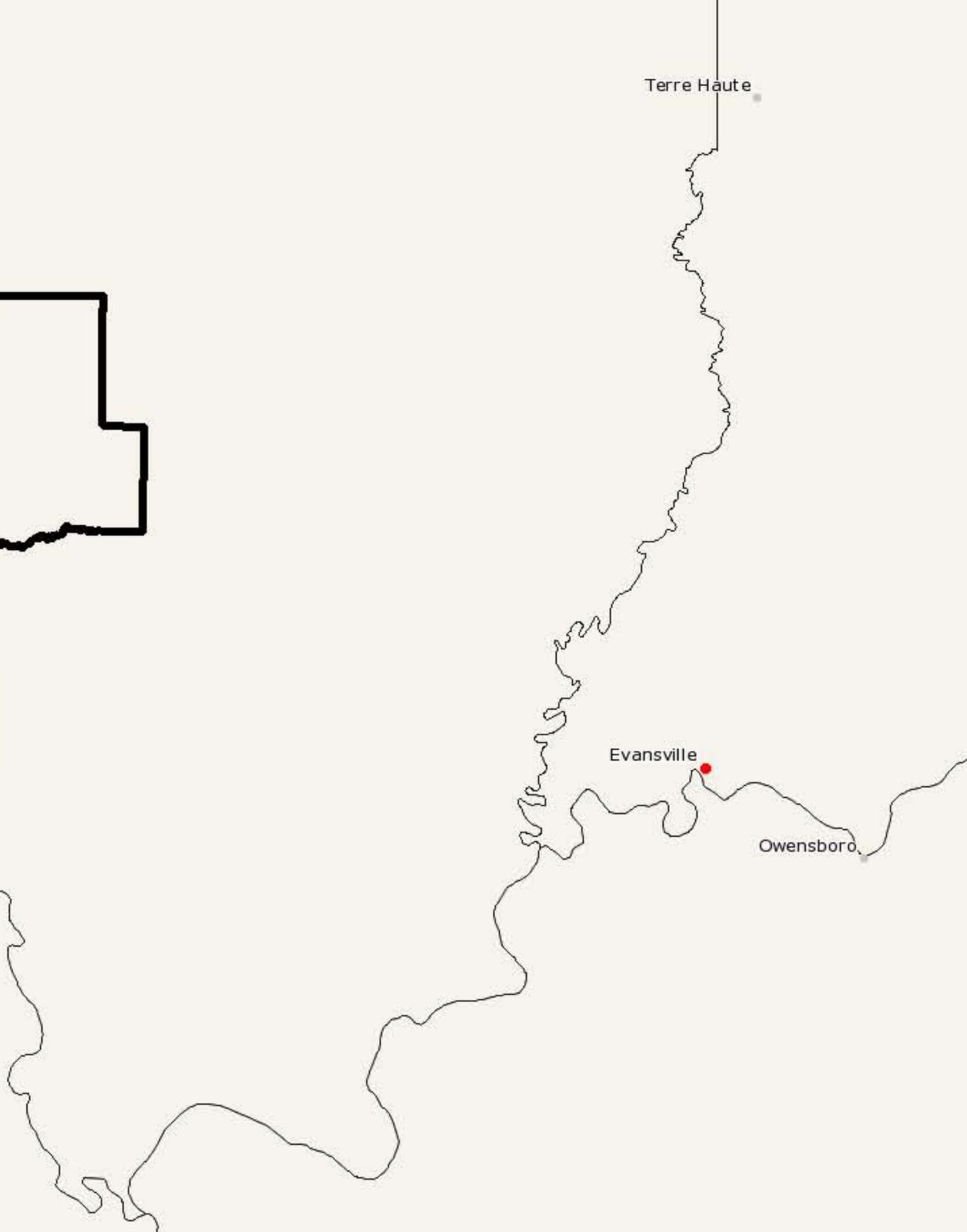


St. Peters  
St. Char  
Florissant  
St. Louis

Terre Haute

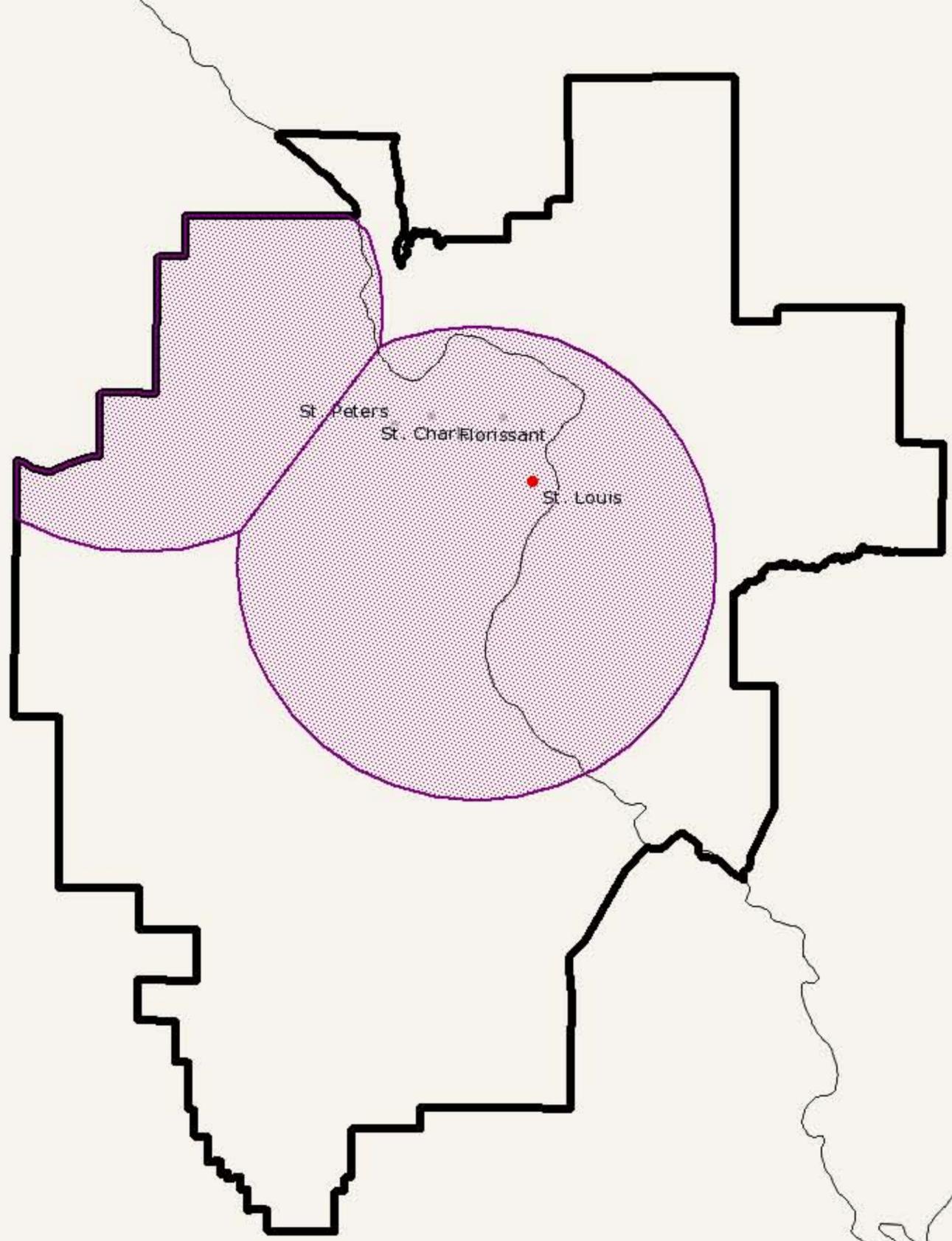
Evansville

Owensboro



Springfield

Columbia



Terre Haute

Evansville

Owensboro

# EXHIBIT 2

Raw Data Supporting Analysis of  
Clearwire Leased EBS Spectrum in BTAs

Call Sign	Channel	BTA	intra BTA Pops	MHz	intra BTA MHz Pops	% BTA pop coverage
WNC592	A Group	B101	64,441	22.5	1,449,923	0.9%
WLX545	A Group	B101	199,445	22.5	4,487,513	2.8%
WLX544	A Group	B101	8,210	22.5	184,725	0.1%
WLX399	A Group	B101	47,344	22.5	1,065,240	0.7%
WNC598	A1, A2	B101	663	11	7,293	0.0%
WNC582	A1, A2	B101	4,122,430	11	45,346,730	58.1%
WNC596	A3, A4	B101	663	11.5	7,625	0.0%
WHR882	A3, A4	B101	4,122,430	11.5	47,407,945	58.1%
WLX508	B Group	B101	87,101	22.5	1,959,773	1.2%
WNC591	B Group	B101	64,441	22.5	1,449,923	0.9%
WLX520	B Group	B101	8,210	22.5	184,725	0.1%
WLX521	B Group	B101	201,514	22.5	4,534,065	2.8%
WLX426	B Group	B101	47,344	22.5	1,065,240	0.7%
WLX395	B Group	B101	77,607	22.5	1,746,158	1.1%
WLX649	B Group	B101	2,239,857	22.5	50,396,783	31.6%
WEF69	B Group	B101	4,096,266	22.5	92,165,985	57.7%
WNC597	B1, B2	B101	663	11	7,293	0.0%
WNC595	B3, B4	B101	663	11.5	7,625	0.0%
WNC250	C Group	B101	663	22.5	14,918	0.0%
WNC523	C Group	B101	64,441	22.5	1,449,923	0.9%
WNC685	C Group	B101	136,475	22.5	3,070,688	1.9%
WHR695	C Group	B101	264,225	22.5	5,945,063	3.7%
WLX394	C Group	B101	77,607	22.5	1,746,158	1.1%
WLX431	C1	B101	8,210	5.5	45,155	0.1%
WLX764	C1, C2	B101	249,883	11	2,748,713	3.5%
WHR883	C1, C2	B101	2,209,873	11	24,308,603	31.2%
WNC836	C1, C2	B101	3,906,934	11	42,976,274	55.1%
WND566	C2, C3, C4	B101	8,210	17	139,570	0.1%
WHR883	C3, C4	B101	2,162,001	11.5	24,863,012	30.5%
WNC836	C3, C4	B101	2,300,833	11.5	26,459,580	32.4%
WLX752	C3, C4	B101	58,148	11.5	668,702	0.8%
WNC990	C3, C4	B101	1,683,553	11.5	19,360,860	23.7%
WLX802	D Group	B101	249,883	22.5	5,622,368	3.5%
WLX364	D Group	B101	74,975	22.5	1,686,938	1.1%
WNC511	D Group	B101	663	22.5	14,918	0.0%
WLX365	D Group	B101	3,612	22.5	81,270	0.1%
WLX703	D Group	B101	47,344	22.5	1,065,240	0.7%
WLX402	D Group	B101	77,607	22.5	1,746,158	1.1%
WND569	D1, D2, D3	B101	9,817	16.5	161,981	0.1%
WLX552	D1, D2, D3	B101	186,199	16.5	3,072,284	2.6%
WHR881	D1, D2, D3	B101	2,219,671	22.5	49,942,598	31.3%
WND242	D1, D2, D3	B101	3,122,948	16.5	51,528,642	44.0%
WLX552	D4	B101	192,559	6	1,155,354	2.7%
WHR881	D4	B101	2,136,061	22.5	48,061,373	30.1%
WLX843	D4	B101	3,017,261	6	18,103,566	42.5%
WHR718	G Group	B101	218,219	22.5	4,909,928	3.1%
WLX547	G Group	B101	187,364	22.5	4,215,690	2.6%
WLX353	G Group	B101	17,648	22.5	397,080	0.2%
WLX400	G Group	B101	47,344	22.5	1,065,240	0.7%
WNC823	G Group	B101	2,230,696	22.5	50,190,660	31.4%
WHR830	G1, G2, G3	B101	3,841,958	16.5	63,392,307	54.2%
WHR831	G4	B101	3,841,958	6	23,051,748	54.2%
WHG332	A Group	B394	2,516,888	22.5	56,629,980	78.2%
WLX446	A Group	B394	142,066	22.5	3,196,485	4.4%
WLX725	A Group	B394	7,031	22.5	158,198	0.2%
WLX447	B Group	B394	142,066	22.5	3,196,485	4.4%
WLX670	B Group	B394	7,031	22.5	158,198	0.2%
WHR806	B Group	B394	2,516,888	22.5	56,629,980	78.2%
WLX444	C Group	B394	142,066	22.5	3,196,485	4.4%
WLX594	C Group	B394	3,080	22.5	69,300	0.1%
WLX767	C Group	B394	39,302	22.5	884,295	1.2%
WHR588	C Group	B394	2,516,888	22.5	56,629,980	78.2%
WLX445	D Group	B394	142,066	22.5	3,196,485	4.4%
WLX732	D Group	B394	3,080	22.5	69,300	0.1%
WLX759	D Group	B394	2,516,888	22.5	56,629,980	78.2%
WLX448	G Group	B394	142,066	22.5	3,196,485	4.4%
WHR865	G1, G2	B394	2,516,888	11	27,685,768	78.2%
WHR864	G3, G4	B394	2,516,888	11.5	28,944,212	78.2%