

I. Introduction

By this minor modification application, Midessa Television LP (“Midessa”), licensee of satellite television station KWAB-DT, seeks to modify KWAB-DT’s post-transition DTV authorization to reduce the station’s effective radiated power (“ERP”) commensurate with the power with which the station is operating today pursuant to special temporary authority (“STA”). Although the station holds a construction permit to increase its power (FCC File No. BMPCDT-20040324AFC), the cost of increasing the station’s ERP to the level contemplated in the construction permit is prohibitive and beyond the reach of this satellite station. As detailed below, given the extremely high costs involved in reaching that ERP, the fact that the vast majority of viewers that would be served by increasing power already receive the station’s programming, either directly from the parent station KWES-TV or via alternative delivery method, and the fact that this station is a satellite station rebroadcasting the signal of its parent station, it is not in the station’s or the public’s interest for KWAB-TV to maximize its digital facilities at this time. Accordingly, Midessa seeks Commission consent to the reduction of KWAB-DT’s post-transition ERP consistent with the parameters contained herein. In addition, as the parameters in this application reflect the station’s anticipated final, post-transition facilities, Midessa also requests that Appendix B of the DTV Table of Allotments also be revised to reflect these parameters.

II. Background

KWAB-TV is the satellite station of KWES-TV, Odessa, Texas, operating in the Odessa-Midland, Texas, Designated Market Area (“DMA”). The Odessa-Midland, Texas DMA is ranked number 157 in the nation by Nielsen Media Research, with approximately \$20 million in annual advertising revenue.¹ KWAB-TV has been a satellite station rebroadcasting its parent station’s programming to the community of Big Spring, Texas and the Eastern portion of the Odessa-Midland, Texas DMA for over forty years. Recently, the Commission approved the assignment of KWES-TV and KWAB-TV, and in doing so it found that a continuation of the KWAB-TV satellite waiver was justified as the station is incapable of operating as a stand alone station and “the continued operation of KWAB-TV as a satellite of KWES-TV would be in the public interest.” *Letter from Barbara A. Kreisman, Chief Video Division, Media Bureau, to Kathleen A. Kirby, Esq., DA 08-2454, dated November 5, 2008.*²

Consistent with the Commission’s DTV transition rules, KWAB-DT commenced digital operations over four years ago, and has been providing service to its community since then pursuant to STA. See FCC File No. BDSTA-20040929AUW and related pending extension request BEDSTA-20081126AKF. The current DTV facilities with which the station is operating are identical to those contemplated in the maximized construction permit and the final DTV Table, except for the ERP, which is currently 33.5 kW, rather than 174 kW proposed in the

¹ BIAfn Television Yearbook 2008 at 137 (2008).

² That proposed transaction was not consummated.

maximized construction permit. From its experience broadcasting in digital during the last four years, Midessa has recognized that the higher power facilities originally contemplated for this satellite station, and reflected in the outstanding construction permit, are unnecessary and excessive. Satisfactory service can be provided with a much lower ERP, serving virtually all of the people who currently receive the station's programming. Accordingly, KWAB-DT respectfully requests that the Commission grant this reduction in power and modify Appendix B of the DTV Table accordingly.

III. Discussion

A. *Cost Prohibitive*

The cost required to increase the station's ERP from its present STA level of 33.5 kW ERP to the construction permit power level of 174 kW ERP is prohibitively expensive. To achieve the full 174 kW ERP contemplated by the maximized construction permit would cost between \$410,000.00 and \$500,000.00.

This cost consists primarily of the purchase and installation of a much larger transmitter than the station currently employs, as well as additional air conditioning and electrical work to accommodate the larger transmitter. Currently, the station operates with a 1 kW transmitter that achieves 33.5 kW ERP. In order to achieve the increased ERP of 174 kW ERP, the station would need to purchase at least a 5.2 kW transmitter. Midessa has obtained quotes for a 5.5 kW transmitter from the Harris Corporation, which, including related RF system and electrical equipment, would cost approximately \$428,000.00, plus approximately \$4,500 in shipping costs. At the time the quote was obtained, the manufacturer was offering discounts which would have dropped the price by approximately \$62,000, however, even with such discounts the cost to upgrade the station's transmitter is prohibitively expensive. In addition to the transmitter itself, the 5.5 kW transmitter would require additional air conditioning and electrical work, which Midessa estimates would cost approximately \$38,000.00.

While the capital costs just to obtain and install the transmitter are prohibitively expensive, the larger, water-cooled transmitter would also be significantly more expensive to operate and maintain over the lifetime of the equipment when compared to the current, smaller transmitter. For example, the increased electricity for the air conditioning alone needed to cool the transmitter room alone – would cost an estimated \$27,000 more per year. Add to this the monthly expense of the cost of the additional electricity required for the translator itself, and the station's operational expenses increase significantly. These costs will be ongoing, putting a further strain on the operation of this satellite station, which by definition cannot operate as a stand-alone station.

Although at one time this satellite station served a more essential role in extending the coverage of parent station KWES-TV in the market, the reality is that today the over-the-air signal provided by the satellite station accounts for a very small fraction of the stations' viewers in the market. As a result of cable and satellite penetration over the past twenty years, and the expanded digital coverage of parent station KWES-DT, the role of KWAB-TV has been

significantly diminished, and it is difficult to even estimate whether the satellite station truly generates any portion of the revenue garnered by KWES-TV in the market. Thus, any increase in the ongoing operational costs associated with satellite station KWAB-TV will simply be a drain on the stations' resources and potentially negatively impact the parent station's service to the community. This fact has only been magnified with the current economic climate and the serious and sustained downturn in broadcast television station revenues across the country. Forcing the station to incur this unnecessary capital expense would be detrimental to the station's continued operation.

Ultimately, as discussed further below, the station would see little to no return on this significant investment, as the majority of the population that would be reached by increasing the station's signal already receives a signal from the parent station KWES-TV. Further, with very high cable and satellite penetration rates in the market, few viewers would be affected by maintaining the satellite station's current ERP.

B. The Potential Loss is Minimal

The theoretical loss to potential over-the-air viewers as a result of KWAB-DT maintaining its current DTV facility as its post-transition facility is minimal, and far outweighed by the countervailing benefits. As demonstrated by the attached engineering exhibit prepared by Carl E. Smith Consulting Engineers, the current DTV facilities reflected in the instant application provide service to 79.8 percent of KWAB-TV's present analog viewers. See Attachment 1 attached hereto. Of the 11,864 viewers that will not be served as a result of KWAB-DT maintaining its current, smaller DTV facility, 3,020 persons, or 25.5 percent of that "loss" population, already receives digital service from the parent station, KWES-DT. Therefore, 49,799 (84.9 percent) of KWAB-TV's 58,643 present analog viewers will continue to receive over-the-air service KWAB-DT or from KWES-DT, resulting in a maximum potential loss of 8,844 viewers. As detailed further below, however, given the extremely low number of over-the-air viewers, the vast majority of this "loss" population – an estimated 91% – will continue to receive the programming of KWAB-DT/KWES-DT from an alternative delivery source and will not be affected by the reduction in over-the-air service.

The current DTV facility will provide service to 51.9 percent of the population predicted for the DTV Appendix B facilities, but here too, much of the projected "loss" already receives service from parent station KWES-DT. In reality, the service proposed and estimated for satellite station KWAB-DT in Appendix B would not bring service to new viewers, but rather would simply replicate service already provided by KWES-DT. In particular, the Western portion of the area that would be unserved by KWAB-DT is located within the service area authorized by KWES-DT's post-transition construction permit. Of the 43,349 potential viewers who would be unserved by KWAB-DT's smaller facility, 34,963, or 80.7 percent of the potential "loss" population, will continue to receive service from KWES-DT. Therefore, 81,742 (90.7 percent) of the 90,128 potential viewers of KWAB-DT's Appendix B facilities will continue to receive over-the-air digital television service from either KWAB-DT or from KWES-DT resulting in a loss of only 8,386 potential viewers.

Based on the above data, it is obvious that a substantial majority of the population that would potentially lose DTV service from KWAB-DT as a result of maintaining KWAB-DT's smaller DTV facilities will continue to receive DTV service from KWES-DT's authorized post-transition operating facilities, which substantially mitigates the impact of this loss in potential service.

C. The Overwhelming Majority of Viewers Receive Signals Via Cable or Satellite

In reality, the actual impact of KWAB-DT's requested reduction in power will be minimal, as the vast majority of viewers will continue to receive the station's programming either directly from parent station (as described above) or via alternative delivery methods.

As detailed above and in the attached engineering exhibit, it is estimated that 84.9 percent of KWAB-TV's present analog viewers will continue to receive over-the-air service from either KWAB-DT or from KWES-DT resulting in a maximum potential loss of fewer than 9,000 viewers. In actuality, however, the overwhelming majority of viewers in the Odessa-Midland market obtain television programming through means other than over-the-air broadcast television, and thus will be entirely unaffected by KWAB-DT's reduction in power. According to information from TVB Research Central it is estimated that 92.6 percent of the households in the Odessa-Midland DMA are able to receive television programming from cable, satellite, or other alternative sources. *See Attachment 2* attached hereto. *See also*, <http://www.tvb.org>, last visited May 20, 2009. More importantly, 71% of the television households subscribe to wired cable television service, with an additional percentage receiving service from either satellite subscription service or alternative delivery sources. Given the extremely high percentage of households receiving service by means other than over-the-air television, the real-world impact of allowing KWAB-DT to maintain its current level of DTV service is, in fact, minimal. Based on the subscription rates in the Odessa-Midland market, it can be estimated that at least 71% -- and realistically more when satellite subscribership is considered -- of the 8,844 viewers that would not receive an over-the-air signal from KWAB-DT or KWES-DT already receive the stations' programming via cable. Thus, the maximum potential loss population is fewer than 2,600 persons -- less than 4.4% of KWAB-TV's present analog population. Such a reduction in service is *de minimis* and far outweighed by the harm that would be created to the stations and the community if KWAB-DT were to incur the significant costs involved in attaining (and maintaining) the maximized power level.

Grant of this minor modification is fully consistent with the Commission's treatment of satellite stations, particularly throughout the DTV transition. *See, e.g., Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18279, 18324-25 (2004) (providing satellite stations with greater flexibility to complete the digital transition and acknowledging that satellite stations operate in small or sparsely populated areas that have insufficient economic bases to support full-service operations). The Commission has long recognized that satellite stations, by definition, lack the economic support to be able to operate as alone stations, and thus should be afforded greater flexibility and consideration. In this instance, KWAB-DT commenced DTV operations over four years ago and has been providing KWES-DT's digital programming to Big Spring and the

eastern portion of the DMA. Far from availing itself of the easier path afforded to satellite stations by surrendering its paired channel and simply flash-cutting at the end of the transition, KWAB-DT built its DTV facility and has been operating in digital for years, thereby driving the DTV transition. With the experience of that operation, however, it is clear that any gain in service area that would be achieved by maximizing the station's DTV facilities consistent with the full construction permit would not be justified by the expense involved in upgrading the station's transmitter and the continued maintenance of the larger transmitter. Rather, both the community and the public interest, are better served by allowing Midessa to preserve its limited financial resources and invest those resources in programming, personnel, and continued operational costs.

IV. Conclusion

For the reasons stated above, KWAB-DT respectfully requests that the Commission grant this minor modification and adjust the parameters reflected in Appendix B of the DTV Table accordingly. Pursuant to Section 1.3 of the Commission's Rules, the Commission may suspend, revoke, amend, or waive any of its rules upon a showing of good cause and where grant of a waiver will serve the public interest. 47 C.F.R. § 1.3 (2007); *see also, WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972). Midessa submits that good cause exists in this case to allow satellite station KWAB-DT to modify its DTV construction permit to reduce its ERP commensurate with its current facilities. Further, as the station has already built and is operating with the facilities contained in this construction permit it will be able to immediately file for a DTV covering license and complete the DTV transition once the Commission approves this minor modification of its construction permit authorization.

ATTACHMENT 1

EXHIBIT 1
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PROPOSED SERVICE AREA
REPLICATION DATA
Midessa Television, LP
Big Spring, TX

KWAB-DT (and paired analog station KWAB-TV) operate as a satellite of KWES-DT - Odessa, Texas (and paired analog station KWES-TV) and rebroadcast KWES-TV's programming. Figure 1.0 is a map exhibit depicting the predicted 41 dBu noise limited contours for both the facilities proposed for KWAB-DT in the attached application¹ and the post-transition DTV allotment facilities specified for KWAB-DT ("Appendix B facilities").² This map exhibit also depicts the predicted 47 dBu (Grade B) contour for KWAB-TV's presently licensed analog facilities, as well as the 36 dBu noise limited contour for the facilities authorized by KWES-DT's post-transition construction permit (BPCDT-20080317ADS). All of these contours were projected based on the appropriate authorized or proposed operating facilities using the appropriate FCC propagation curves³ and terrain data extracted from the NGDC 30 second terrain database.

Table 1.0 presents a summary of the population within the proposed KWAB-DT noise limited contour, the noise limited contour for KWAB-DT's post-transition allotment (Appendix B) facilities, and the Grade B contour for the presently licensed KWAB-TV analog facilities. It also provides this population data for the portions of these contours

¹The facilities proposed in the attached application are identical to those presently being utilized by KWAB-DT pursuant to special temporary authority (BDSTA-20040929AUW, as extended). As a result, the proposed modification of the KWAB-DT construction permit will not result in the loss of DTV service to any viewers who are presently receiving KWAB-DT.

²KWAB-DT's Appendix B facilities are identical to those presently specified in KWAB-DT's construction permit (BMPCDT-20040324AFC).

³The F(50,90) curves were used to project the noise limited contours for KWAB-DT and KWES-DT, while the F(50,50) curves were used to project the Grade B contour for KWAB-TV.

EXHIBIT 1
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which are not located within the noise limited contour for KWES-DT's post-transition construction permit facilities. These population values are based on the 2000 U. S. Census and were determined using proprietary computer software which totals the population for all census blocks whose centroid is located within the area being evaluated.⁴

As shown by this data, the proposed facilities will provide service to 79.8 percent of KWAB-TV's present analog viewers. However, of the 11,864 viewers predicted to lose service as a result of the smaller DTV facility, 3020, or 25.5 percent of the loss population, will continue to receive service from KWES-DT. Therefore, 49,799 (84.9 percent) of KWAB-TV's 58,643 present analog viewers will continue to receive service from either KWAB-DT or from KWES-DT resulting in an actual loss of only 8844 viewers.

Further, the proposed facility will provide service to 51.9 percent of the population predicted for the Appendix B facilities, but the Appendix B population is inflated as it represents a "gain" in population as a result of duplicating KWES-DT's service in Midland. Once again, of the 43,349 potential viewers who would be unserved by KWAB-DT's smaller facility, 34,963, or 80.7 percent of the potential loss population, will continue to receive service from KWES-DT. Therefore, 81,742 (90.7 percent) of the 90,128 potential viewers of KWAB-DT's Appendix B facilities will receive service from either KWAB-DT or from KWES-DT resulting in an "opportunity loss" of only 8386 potential viewers.

Based on the above data, it is obvious that a substantial majority of the population which would lose potential DTV service from KWAB-DT as a result of the proposed

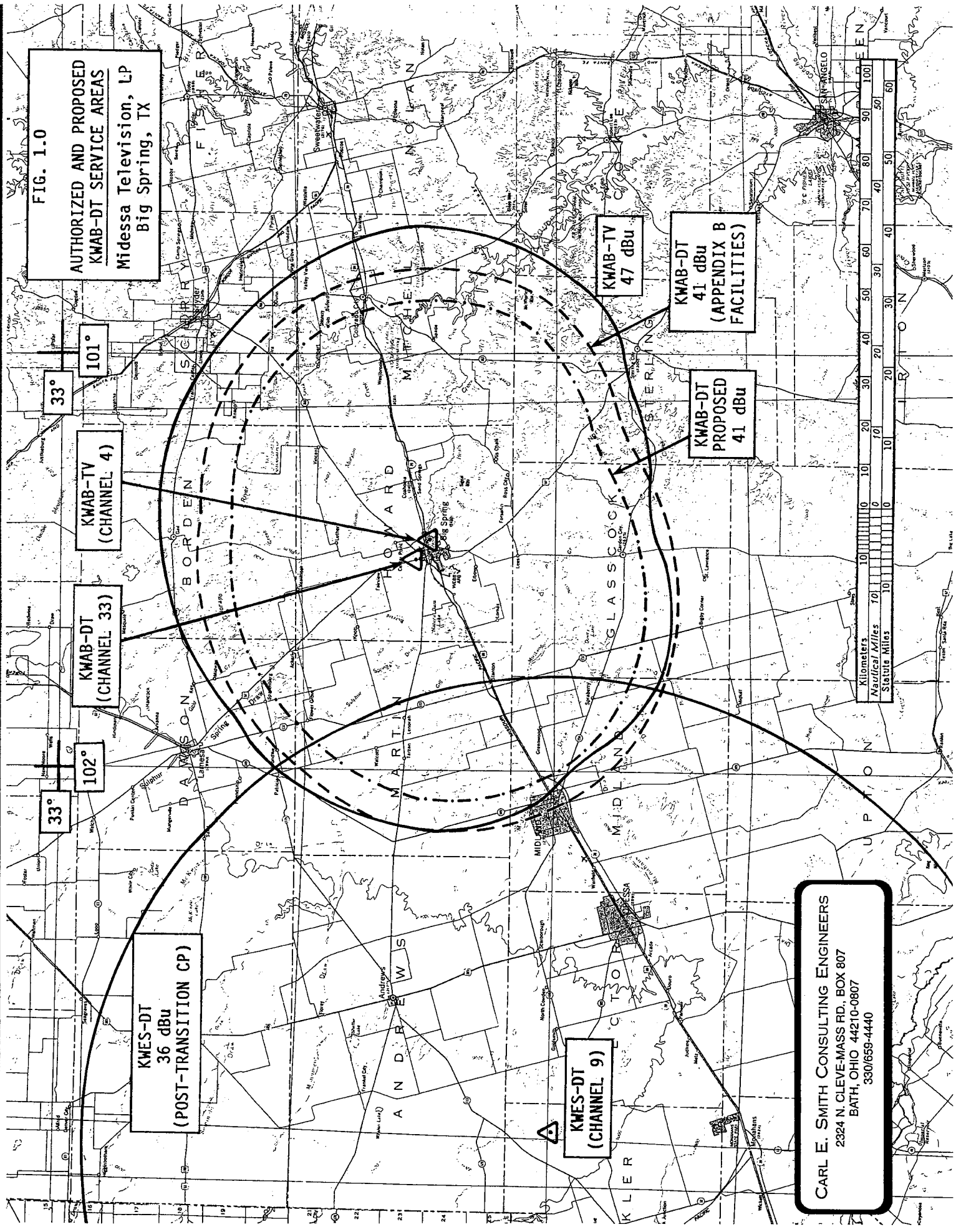
⁴Because of the nature of the terrain in this area and the lack of any significant interference from other stations, these population values very closely approximate those determined using the Longley-Rice methodology outlined in OET Bulletin 69.

EXHIBIT 1
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modification of the KWAB-DT construction permit will continue to receive DTV service from KWES-DT's authorized post-transition operating facilities, which substantially mitigates the impact of this loss in potential service.

FIG. 1.0

AUTHORIZED AND PROPOSED
KWAB-DT SERVICE AREAS
Midessa Television, LP
Big Spring, TX



CARL E. SMITH CONSULTING ENGINEERS
2324 N. CLEVELAND RD., BOX 807
BATH, OHIO 44210-0807
330/659-4440

TABLE 1.0

KWAB-DT POPULATION DATA

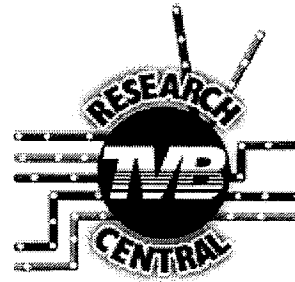
Midessa Television, LP

Big Spring, TX

	<u>Population (2000 U. S. Census)</u>	
	<u>Total Service Area</u>	<u>Portion of Service Area Not Served By KWES-DT (Post-Transition CP)</u>
Proposed Facilities	46,779	37,533
Appendix B Facilities	90,128	45,919
Licensed Analog Facilities	58,643	46,377

ATTACHMENT 2

MARKET TRACK



Cable and ADS Penetration by DMA

The far right column ("% ADS" under the Subscription TV heading) can be used as a cable discount estimate -- i.e., it is possible that whatever the local cable system or interconnect is claiming for ratings or homes delivered in this DMA can be discounted by this percentage.

Odessa-Midland

Date	TV Households*			Subscription TV Households**	
	%			%	
	Cable and/or ADS	Wired Cable	% ADS	Wired Cable	% ADS
Feb 2009	92.6	65.8	28.0	71.0	30.3
Nov 2008	91.8	65.9	26.7	71.8	29.1
Jul 2008	90.9	67.1	24.5	73.8	27.0
May 2008	91.6	68.6	23.6	75.0	25.7
Feb 2008	91.8	69.2	23.3	75.4	25.3
Nov 2007	91.9	70.7	22.2	77.0	24.1
Jul 2007	91.1	71.4	20.7	78.3	22.7
May 2007	90.2	71.2	20.0	78.9	22.2
Feb 2007	90.0	73.7	17.5	81.9	19.5
Nov 2006	90.9	74.6	17.7	82.0	19.5
Jul 2006	90.5	75.2	16.9	83.1	18.6
May 2006	88.9	74.3	16.2	83.5	18.2
Feb 2006	87.7	73.5	15.5	83.8	17.7
Nov 2005	88.4	74.6	15.5	84.5	17.5
Jul 2005	88.0	74.2	15.7	84.3	17.9
May 2005	88.6	74.6	15.8	84.2	17.8
Feb 2005	88.7	74.7	15.8	84.3	17.8
Nov 2004	88.6	74.5	15.8	84.1	17.8
Jul 2004	88.4	75.1	15.9	85.0	18.0
May 2004	88.7	75.4	16.4	84.9	18.5
Feb 2004	88.2	74.6	16.4	84.5	18.6

Nov 2003	87.8	74.7	15.8	85.0	18.0
Jul 2003	87.3	73.3	16.6	83.9	19.0
May 2003	88.1	72.6	18.2	82.4	20.7
Feb 2003	89.9	74.3	18.4	82.6	20.5
Nov 2002	89.5	74.1	18.0	82.8	20.1
Jul 2002	90.2	76.0	16.7	84.2	18.5
May 2002	89.9	75.2	17.0	83.7	18.9
Feb 2002	88.2	72.8	17.9	82.5	20.3
Nov 2001	88.7	72.9	18.1	82.2	20.4
Jul 2001	88.1	71.1	18.7	80.7	21.2
May 2001	85.6	72.0	15.5	84.1	18.1
Feb 2001	85.9	71.3	17.2	83.0	20.0
Nov 2000	86.9	70.9	17.4	81.6	20.0
Jul 2000	87.9	70.7	19.8	80.4	22.5
May 2000	84.4	71.2	14.3	84.4	16.9
Feb 2000	82.7	71.7	11.0	86.7	13.3

Source: Nielsen Media Research, DMA Household Universe Estimates

Alternate Delivery Systems (ADS) refers to reception of TV programming via satellite (DBS or Large Dish), or from satellite master antenna systems (SMATV), or from multipoint distribution systems (MDS).

* TV Households with wired cable as well as ADS are included in both the Wired Cable and ADS columns. This causes the sum of Wired Cable and ADS to be a larger number than the number in the Cable and/or ADS column.

** Subscription TV Households are those paying for video delivery. The percentages add up to more than 100% because households with both wired cable and ADS are included in both columns.

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