

Multiple Ownership

In addition to KWES-TV, Odessa, Texas, Midessa Television Limited Partnership (“Midessa”), the applicant, is also the licensee of satellite television station KWAB-TV, Big Spring, Texas (Facility ID No. 42008). KWAB-TV serves as a satellite station of KWES-TV and rebroadcasts the signal of the parent station to the eastern portion of the Odessa-Midland Designated Market Area. The operation of KWAB-TV as a satellite of KWES-TV is believed to have been in place for well over three decades and pre-dates Midessa’s acquisition of the two stations.

Historically, these two stations have not had any prohibited city-grade contour overlap while operating in analog, consistent with the first element of the Commission’s three-part presumptive satellite exemption standard applicable to new satellite stations or continuations of previous waivers.¹ In assigning digital television allocations and completing the transition to DTV, however, the FCC did not provide guidance regarding the issue of potential overlap between parent and satellite digital television stations, nor did it factor that issue into the assignment of DTV allocations, or the analysis of modifications of digital stations. Thus, the recent transition to digital television has potentially introduced overlap between the contours of KWES-TV and KWAB-TV where such overlap may not have existed in analog.

The possible introduction of overlap between parent and satellite station resulting from the transition to digital is not a situation unique to KWAB-TV and KWES-TV, but rather, it is believed that the change to digital has raised this issue for stations in markets around the country. While the Commission has acknowledged the issue, it has not yet taken steps to revise its rules or to provide guidance on how the contour overlap aspect of the satellite waiver translates into the digital world, including questions such as: 1.) whether the prohibition of overlap is still germane in the digital world and in the current media environment, 2.) what digital contour should be used to evaluate the potential for overlap, assuming the potential for overlap is still germane, and 3.) whether stations that did not previously have any overlap in analog are effectively grandfathered in digital. In several recent cases involving requests for a continuation of a satellite waiver the FCC has acknowledged that this is an issue. In those cases, the Commission noted that “the digital Principal Community contour is not an equivalent standard [to the previous analog principal community contour] to use in determining whether a proposed satellite station qualifies for the presumptive satellite exemption to the duopoly rule.”² Thus, while licensees know that the digital principal community contour is not a useful parallel to the analog principal community contour for these purposes, there is currently no clear rule applicable to digital television operations.

¹ *Television Satellite Stations Review of Policies and Rules*, Report and Order, 6 FCC Rcd 4212 (1991) (subsequent history omitted).

² *NVT Wichita Licensee, LLC, et al.*, Memorandum Opinion and Order, 25 FCC Rcd 2354, DA 10-416 (MB 2010).

Given that the power increase sought herein for KWES-TV is intended to ameliorate reception issues and to resolve the potential for interference experienced by KWES-TV operating on VHF Channel 9, Midessa respectfully requests that the Commission approve the instant power increase regardless of any potential overlap between the digital contours of the parent and satellite stations, and that the existing common ownership of KWES-TV and satellite station KWAB-TV be effectively grandfathered. In the alternative, and to the extent necessary, Midessa requests a waiver of any applicable rule that the Commission may subsequently adopt addressing the satellite ownership issues caused by the transition to digital television that would otherwise preclude the modification of KWES-TV sought herein.³

³ 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 the waiver will serve the public interest. 47 C.F.R. § 1.3; *see also*, *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).