

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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August 23, 2012

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

FILED/ACCEPTED

AUG 23 2012

Federal Communications Commission
Office of the Secretary

Attn: Barbara Kriesman
Chief, Video Division

Re: KSQA (TV), Topeka, KS, Facility ID 166546 – Request for Waiver of PSIP
Channel Designation

Dear Ms. Dortch:

Introduction

KSQA, LLC, licensee of commercial television station, KSQA, Channel 12, Topeka, Kansas, by its counsel, pursuant to Sections 1.3 of the Commission Rules, requests a waiver of Section 73.682(d) of the Commission's Rules. Section 73.682(d) requires that station KSQA comply with the ATSC A/65C Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1, dated May 9, 2006 (PSIP Standard). KSQA, LLC hereby requests the Commission to either (a) waive the designation of Channel 22 for PSIP Standard purposes and substitute Channel 12 or (b) delete the Channel 22 designation. In support of its request, KSQA LLC demonstrates as follows:

PSIP Purposes

Under the PSIP Standard, television broadcast stations typically have had one broadcast physical channel on which they broadcast an analog signal and a second broadcast physical channel on which they broadcast a digital signal. Stations invested substantial resources over the decades in brand recognition promoting their analog channel number. If viewers were forced to tune to a digital signal by the physical broadcast band number, then the benefits of the analog channel branding would be lost. Moreover, a digital broadcast signal may consist of multiple programs, so it is necessary in many cases to identify multiple "virtual channels" within a single

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digital broadcast band. Under these circumstances, not only would station investment be lost, viewer confusion would have been overwhelming. To avoid these problems, the PSIP Standard provides, *inter alia*,¹ a method to protect a station's branding investment and alleviate viewer confusion by allowing a system to identify stations in the post-analog environment by the analog channel on which they historically operated, i.e., providing a virtual channel identified by "major" and "minor" channel numbers.²

KSQA PSIP Designation

Under the rules, the PSIP Standard for KSQA, Channel 12, is designated as Channel 22, a pre-digital channel allocated by the Commission in August 2006. Subsequent to the allocation and designation, the Commission, *sua sponte*, determined that Channel 22 presented undesired interference to a number of co-channel stations. KSQA, LLC believes these stations included WOWT-TV Omaha, NE and KGCS-LD, Joplin, MO.³ Therefore, the Commission amended the digital Table of Allotments adding Channel 12 and thereafter deleting Channel 22.⁴

KSQA as Digital Station Only

Because of the immediacy of the digital transition, KSQA, LLC was not required to construct an analog facility.⁵ Instead, KSQA, LLC only constructed a digital facility,

¹ The PSIP Standard data also support interactive electronic program guides. This waiver requests does not seek alteration of this portion of the PSIP Standard for KSQA.

² More specifically, the PSIP Standard provides important services for the broadcaster and viewers. It preserves a station's branding in the transition from NTSC to ATSC. One of the tables in PSIP is the Virtual Channel Table (VCT). The VCT identifies associated major and minor channel numbers, tells the receiver whether a broadcaster is broadcasting multiple program channels and, if so, how to find them. In addition to listing virtual channels, the VCT provides a link to the DTV channel's analog equivalent. The purpose of the VCT linkage is to translate a station's branding from the analog RF channel to the digital spectrum. This helps a station preserve its investment in channel branding because it allows DTV receivers to electronically associate the two channels. This allows the viewer to easily navigate between a station's current analog channel and its associated DTV channels or services. See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 04-192, 19 FCC Rcd 18279, paras. 150-153 (2004).

³ See FCC File No. BNPCT-20060424ADV, Engineering Exhibit E (Interference Study).

⁴ See *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, *Seventh Report and Order and Eighth Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15581, Appendix B (2007), attached as an Exhibit.

⁵ See, *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 07-228, 23 FCC Rcd 299, par. 42, (2007)

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commencing operations for the first time on Channel 12 in September 2011.⁶ KSQA has never broadcast on any channel other than Channel 12.

Lack of Branding & Viewer Confusion

Because KSQA has never broadcast on any channel other than digital Channel 12, there is not a need to protect a non-existent branding investment in Channel 22 or guard against viewer confusion of migrating from an analog channel to a digital channel, i.e., Channel 22 to Channel 12. Simply stated, for KSQA and its viewers, uniquely there was no transition. It appears to KSQA, LLC that when the Commission amended the Table of Allotments adding Channel 12 for KSQA LLC (or sometime thereafter), the Commission inadvertently did not delete the PSIP designation of Channel 22. This explanation is supported by two other case proceedings.

The first case involves Word of God Fellowship Inc. ("WGF") and Channel 3 at Apalachicola, FL. The prior construction permittees of both KSQA, LLC and WGF were successful bidders in Auction 64 in 2006 for new stations. Like KSQA, LLC, WGF was not required and did not construct an analog facility. However, unlike KSQA, LLC, the WGF facility ultimately was not assigned a PSIP channel. See BPRM-20031231ACD.

In the second case, Entravision Holdings LLC was also a successful bidder in Auction 64 for Channel 13 in Pueblo, CO. Like KSQA, subsequent to the auction, the Commission amended the Table of Allotments and substituted Channel 48 for Channel 13. The Commission ultimately designated Channel 48 as the PSIP channel, and did not designate a second PSIP channel for this station. See BLCDDT-20090409AIS. KSQA LLC maintains that in both Apalachicola and Pueblo, this was in recognition that PSIP channel designations were uniquely unnecessary and inappropriate for these stations.

Waiver Request

The *Second Periodic Review*⁷ provides that a waiver of the PSIP Standard will be evaluated on a case-by-case basis for those unique situations that are not accounted for by the PSIP Standard. Two factors support a waiver for KSQA. First, as detailed above, the designation of Channel 12 as the PSIP channel to minimize viewer interference provides a previously approved basis for a waiver. See, *Letter from Barbara A Kreisman, Chief, Video Division to Associated Christian Television System, Inc., c/o James A. Koerner, Esq., 25 FCC*

⁶ On September 29, 2011, KSQA LLC provided notice to the Commission of the commencement of program test authority on Channel 12. On November 29, 2011, the Commission granted a license to cover. See BLCDDT-20110919ABN.

⁷ *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 04-192, 19 FCC Rcd 18279, 18346 (2004) ("Second Periodic Review").

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In re:)	
)	
KSQA, L.L.C.)	MB Docket No. 12-168
Licensee of Television Station)	
KSQA, Channel 12)	CSR-8659-M
For Carriage of KSQA(TV), Topeka,)	
Kansas)	

To: Office of the Secretary
Attn.: Chief, Media Bureau

MOTION FOR LEAVE TO FILE NOTICE AND NOTICE

KSQA, L.L.C, licensee of commercial television station KSQA, Channel 12, Topeka, Kansas, by its attorneys, pursuant to Section 1.3 of the Commission Rules, hereby files this Motion for Leave to File Notice¹ and Notice to apprise the Commission of two developments affecting the issues presented in this proceeding.

First, on August 15, 2012, EchoStar Corporation, the technology company that owns and operators the satellite fleet for close affiliate Dish Network Inc., commenced carriage of the signal of KSQA in the Topeka DMA on EchoStar, 10 110 W TP 31 Spotbeam 24. Dish Network is utilizing the KSQA over-the-air broadcast Channel 12 for tracking, mapping and program data.

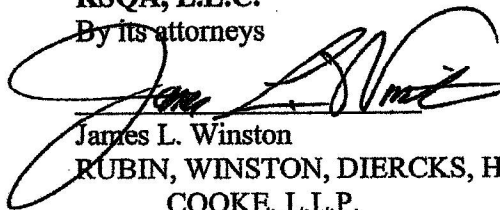
Second, on August 23, 2012, KSQA LLC filed a formal request with the Commission to waive or delete Channel 22 as the station's designated Program and System Information Protocol channel. A copy of the request is attached hereto.

¹ As KSQA, LLC is only providing notice of recent developments, it is not clear that a motion for leave to file the notice is required. However, KSQA, LLC is submitting the motion out of an abundance of caution.

Respectfully submitted,

KSQA, L.L.C.

By its attorneys

A handwritten signature in black ink, appearing to read "James L. Winston", is written over the printed name and firm name.

James L. Winston

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Attn: Barbara Kriesman
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Rcd. 9237, 9238 (Media Bur. 2010). Second, unlike essentially all other stations, as detailed above, KSQA never constructed and never operated in the analog environment and has no analog branding investment to protect, and there are no viewer confusion transition concerns to minimize.

If the Channel 22 designation is not deleted or waived, this would *create, not alleviate*, confusion where none would otherwise exist. Viewers would be greatly confused because in the Topeka DMA, Channel 22 is known as Kansas 22, the statewide program network carried on and operated by Cox Communications.⁸ Confused viewers would be unnecessarily deterred and burdened attempting to access both KSQA programs and Kansas 22 programs. Further, on August 15, 2012, Dish Network commenced carriage of KSQA TV utilizing for tracking and mapping the station's off-air Channel 12, not Channel 22. See Satellite Guys: Dish Network Uplink Activity Report, 8/15/2012.⁹ Using Channel 22 as a PSIP channel would add additional confusion for Dish Network viewers. Also, other multichannel video program distributors have been requested to provide KSQA on-channel 12 carriage and are expected to follow Dish Network. Viewers should not be subjected to needless confusion of a Channel 22 when all other program distributors will only utilize Channel 12.¹⁰ KSQA should not be subjected to investing in branding channel 22 which is unrelated to any and all aspects of the station's over-the-air broadcasting.

KSQA LLC submits that less than a handful of similarly situated stations exist, if any, and KSQA is therefore in a unique situation. Thus, KSQA LLC requests the Commission to either change the station's PSIP designation deleting Channel 22 and substituting Channel 12; or, alternatively deleting the PSIP channel designation completely.

Sincerely,



James L. Winston
Counsel for KSQA, LLC

JLW/kn

⁸ See Cox Channel lineup at

<http://ww2.cox.com/wcm/en/residential/datasheet/arkansas/COXTopeka.pdf>

⁹ Carriage is on EchoStar10 110W TP 31 Spotbeam 24; online at

www.satelliteguys.us/threads/290570-8-15-2012-6-16pm-Uplink-Activity-Report-79-changes

¹⁰ KSQA, LLC notes that it has filed a complaint seeking on Channel 12 carriage against Cox Communications Inc., the dominant cable operator in the Topeka DMA, which proposes to carry KSQA on Channel 10. *Complaint of KSQA, LLC*, MB Docket No. 12-168, CSR-8659-M.

Facility ID	State and City	NTSC		DTV							Population (thousand)	% Interference Received
		Chan	Chan	ERP (kW)	HAAT (m)	Antenna ID	Latitude (DDMMSS)	Longitude (DDMMSS)	Area (sq km)			
77063	KS HUTCHINSON	36	35	1000	310	29560	375623	873042	22741	712	0	0
60683	KS LAKIN	3	8	35	149	64618	374940	1010635	20546	77	7.4	7.4
42636	KS LAWRENCE	38	41	551	291	74520	365842	943201	19399	1978	0	0
58552	KS PITTSBURG	7	7	4.2	340		371315	944225	23837	455	0.4	0.4
83992	KS PITTSBURG	14	13	3.2	163	80187	371315	944222	13434	303	3.2	3.2
11912	KS SALINA	18	17	65	314	28829	390616	972315	15730	202	0	0
70838	KS TOPEKA	11	11	15.4	305	80233	390351	954549	27177	1122	0.3	0.3
19546	KS TOPEKA	22	12	3.2	225	80241	390350	954549	13374	420	8.6	8.6
63160	KS TOPEKA	13	13	18.1	421	75026	390019	960258	33510	674	0.5	0.5
67335	KS TOPEKA	27	27	50	320	74472	390534	954704	18554	485	0	0
49397	KS TOPEKA	49	49	123	451	75032	390134	956458	18858	519	0	0
55522	KS WICHITA	10	10	24.6	310	74441	374653	973108	30061	743	0.1	0.1
11911	KS WICHITA	24	26	350	303	43659	374640	973037	21248	704	0	0
72348	KS WICHITA	33	31	1000	345		374801	973129	31920	747	0.1	0.1
72358	KS WICHITA	3	45	891	312		374626	973051	28473	740	0.1	0.1
34171	KY ASHLAND	25	26	61.3	137	31365	382744	823712	11240	483	0.8	0.8
67798	KY ASHLAND	61	44	50	189	74858	382511	822406	9527	517	1.8	1.8
27696	KY BEATTYVILLE	65	7	28	322		373647	834018	29307	1000	0.8	0.8
4692	KY BOWLING GREEN	13	13	7.65	226	74498	370352	862607	20962	542	2.1	2.1
61217	KY BOWLING GREEN	40	16	600	224	43547	370210	861020	18291	424	1.5	1.5
71861	KY BOWLING GREEN	24	18	61	177		370349	862607	14430	362	0.9	0.9
34177	KY BOWLING GREEN	53	48	54.8	234	44491	370522	863805	13561	342	0.1	0.1
25173	KY CAMPBELLSVILLE	34	19	1000	370	32906	373151	852845	29898	2015	0.6	0.6
34204	KY COVINGTON	54	24	53.5	117	31523	390150	843023	10320	1949	2.2	2.2
64017	KY DANVILLE	56	4	26.5	327	64813	375251	841916	36995	1251	0	0
34181	KY ELIZABETHTOWN	23	43	61	178	31543	374055	855031	12210	840	0	0
37809	KY HARLAN	44	51	550	577		364800	832236	33664	1196	3.3	3.3
24915	KY HAZARD	57	12	50	398		371136	831052	32160	783	8	8
34195	KY HAZARD	35	16	53.2	369	31615	371135	831172	16908	377	2.2	2.2
24914	KY LEXINGTON	27	13	30	282	40363	380223	842410	23928	921	3	3
73205	KY LEXINGTON	18	39	475	286	70206	380203	842339	19494	830	3.5	3.5
51597	KY LEXINGTON	36	40	69.5	305	74859	380203	842339	17819	810	0.1	0.1
34207	KY LEXINGTON	46	42	46	252	31539	375246	841933	13467	735	0.3	0.3
73692	KY LOUISVILLE	21	8	27	200	45865	380159	854517	21952	1500	0.7	0.7

CERTIFICATE OF SERVICE

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P., do hereby certify that on August 23, 2012, true copies of the foregoing "Motion for Leave to File Notice and Notice" were mailed, first class U.S. mail, postage pre-paid to the following:

Cox Cable Communications, Inc.
System Manager
901 George Washington Boulevard
Wichita, KS 67211

KTKA
General Manager
6835 NW Highway 24
Topeka, KS 66618

Gary S. Lutzker, Esq.
Dow Lohnes PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802

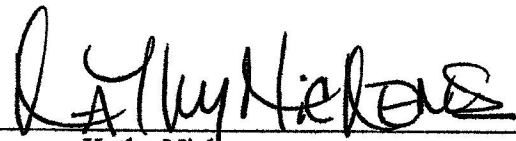
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