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March 21, 2001

ARTHUR B. GOODKIND
202-457-1815

Internet Address:
agoodkin@hklaw.com

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Ms. Salas:

Transmitted herewith, on behalf of Eagle Communications, Inc., are an original and four copies of its "Petition for Rule Making to Change DTV Channel Allotment for Television Station KECI-DT, Missoula, Montana."

In the event there are any questions concerning this matter, please contact the undersigned.

Sincerely,



Arthur B. Goodkind

Enclosure

cc(w/enc.): John Morgan, FCC
Pam Blumenthal, Esq.

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MAR 21 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of:

Modification of DTV Channel
Allotment for Television
Station KECI-DT,
Missoula, Montana

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TO: Mass Media Bureau

PETITION FOR RULE MAKING TO CHANGE DTV CHANNEL ALLOTMENT
FOR TELEVISION STATION KECI-DT, MISSOULA, MONTANA

Eagle Communications, Inc. ("Eagle"), permittee of television station KECI-DT, Missoula, Montana, by its attorneys, hereby requests that the Commission initiate proceedings to amend Section 73.622 of its Rules and Appendix B to its Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Reports and Orders in MM Docket Number 87-268 to substitute Channel 5 for Channel 40 as the DTV transition channel to be paired with television station KECI-TV. The operating parameters requested for KECI-DT on Channel 5, a maximum effective radiated power of 9.83 kw at an antenna height of 616 meters

above average terrain, are discussed in further detail in the attached Engineering Statement of Jules Cohen, P.E. (Attachment A hereto).

As explained in Mr. Cohen's Engineering Statement the use of Channel 5 in place of Channel 40 will improve service to the viewing public owing to Channel 5's lower propagation losses in the Montana mountainous terrain and the dominance of VHF transmissions in the area. Additionally, both the initial capitalization costs and the operating costs for a Channel 5 operation will be substantially lower than for Channel 40, an important factor for a licensee in a market ranked only 171st in size. As shown in Mr. Cohen's attached Engineering Statement, Channel 5 may be substituted for Channel 40 as the DTV channel allotment for KECI-DT in full compliance with the Commission's rules concerning interference to other stations and will comply fully with the principal city coverage requirements of Section 73.625(a) of the Commission's Rules.

Accordingly, Eagle requests that the Commission initiate proceedings to amend Section 73.622(b) of the Rules as set forth in this petition.¹

Respectfully submitted,

EAGLE COMMUNICATIONS, INC.

By: 
Arthur B. Goodkind

HOLLAND & KNIGHT LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801
(202) 457-1815

March 21, 2001

¹ Pursuant to Section 1.401(e) of the Rules, a draft "Notice of Proposed Rule Making" is Attachment B hereto.

Jules Cohen, P.E.
Consulting Engineer

**ENGINEERING STATEMENT ON BEHALF OF
EAGLE COMMUNICATIONS, INC.
KECI-DT, MISSOULA, MONTANA**

This engineering statement prepared on behalf of Eagle Communications, Inc., licensee of KECI-TV and permittee of KECI-DT, Missoula, Montana, is in support of a petition to change the assignment of KECI-DT from Channel 40, 116 kilowatts effective radiated power (ERP), 616 meters above average terrain (HAAT), to Channel 5, 9.83 kilowatts ERP, 616 meters HAAT. Geographic coordinates would remain unchanged at 47° 01' 04" N, 114° 00' 47" W.

The use of VHF Channel 5 in place of UHF Channel 40 would improve service to the viewing public because of its lower propagation losses in the Montana mountainous terrain and the dominance of VHF transmissions in the area. Furthermore, the use of Channel 5 will be a lesser financial burden in Missoula, ranking 171st in market size. Both the initial capitalization and operating costs will be substantially less for the low power transmitter required to achieve average ERP of only 9.83 kilowatts, the maximum allowed by 73.622(f)(6)(iii) of the FCC rules for a Zone II digital station with HAAT of 616 meters, compared to 116 kilowatts on Channel 40.

An analysis made in accordance with OET Bulletin No. 69 showed that no DTV assignments are potentially affected by the use of Channel 5 in Missoula. Two NTSC co-channel and two NTSC adjacent channel stations are potentially affected; however, the completed analysis shows that only one co-channel and one adjacent channel are affected and the effects are well below the *de minimis*

Jules Cohen, P.E.
Consulting Engineer

Engineering Statement
Eagle Communications, Inc.
KECI-DT, Missoula, Montana

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two percent limit. Tabulations of the complete results for the two stations follow:

KFBB-TV, Channel 5, Great Falls, Montana

	<u>Population</u>	<u>Area (sq km)</u>	<u>Cells</u>	<u>% Pop Within</u>
Within Grade B	90,578	25,448.0	6,333	101.5
Not affected by terrain losses	89,199	22,799.9	5,674	100.0
Lost to NTSC IX	0	0.0	0	0.0
Lost to additional IX by DTV	969	56.3	14	1.1
Lost to all IX	969	56.3	14	1.1

KTVM, Channel 6, Butte, Montana

	<u>Population</u>	<u>Area (sq km)</u>	<u>Cells</u>	<u>% Pop Within</u>
Within Grade B	188,694	49,635.2	12,401	135.9
Not affected by terrain losses	138,804	39,348.7	9,831	100.0
Lost to NTSC IX	867	1,152.7	288	0.6
Lost to additional IX by DTV	141	92.1	23	0.1
Lost to all IX	1,008	1,244.8	311	0.7

As shown in the following table, KECI-DT operating as proposed on Channel 5 would suffer little interference and would be able to replicate its Channel 13 NTSC service.

	<u>Population</u>	<u>Area (sq km)</u>	<u>Cells</u>	<u>% Pop Within</u>
Within Noise Limited Contour	144,895	43,518.0	10,839	103.6
Not affected by terrain losses	139,809	41,137.1	10,246	100.0
Lost to NTSC IX	696	180.7	45	0.5
Lost to additional IX by DTV	0	20.1	5	0.0
Lost to DTV IX only	0	20.1	5	0.0
Lost to all IX	696	200.7	50	0.5
Percent match DTV/NTSC	100.0	100.0		

Jules Cohen, P.E.
Consulting Engineer

Engineering Statement
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KECI-DT, Missoula, Montana

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The distance from the KECI-DT transmitter site to the far side of Missoula is approximately twenty kilometers. Calculated in accordance with commission rules, the "City Grade" 35 dB μ f(50,90) contour of the proposed KECI-DT operation extends approximately 120 kilometers on the bearing toward Missoula.

I declare under the threat of perjury that the foregoing is correct to the best of my knowledge and belief.



Jules Cohen, P.E.

March 20, 2001



[DRAFT NOTICE OF PROPOSED RULE MAKING, SUBMITTED PURSUANT TO SECTION 1.401(e) OF THE COMMISSION'S RULES]

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

In the Matter of)
)
Amendment of Section 73.622(b),) MM Docket No. RM
Table of Allotments, Digital)
Television Broadcast Stations)
(Missoula, Montana))

NOTICE OF PROPOSED RULE MAKING

Adopted:

Released:

Comment Date:

By the Chief, Video Services Division:

1. The Commission has before it a petition for rule making filed by Eagle Communications, Inc. ("Petitioner"), licensee of NTSC television station KECI-TV, Missoula, Montana. Petitioner requests the substitution of Channel 5 for Channel 40 for use by KECI-DT, with an effective radiated power of 9.83 kw and an antenna height of 616 meters above average terrain.

2. In support of its request, Petitioner states that the use of Channel 5 in place of Channel 40 will improve service to the viewing public owing to Channel 5's lower propagation losses in the Montana mountainous terrain and the dominance of VHF transmissions in the area. Additionally, both the initial capitalization costs and the operating costs for a Channel 5 operation will be substantially lower than for Channel 40, an important factor for a licensee in a market ranked only 171st in size.

3. Accordingly, Petitioner requests that the Commission initiate proceedings to substitute Channel 5 for Channel 40 as its transitional DTV channel. Petitioner has submitted engineering materials demonstrating that the proposed substitution would be consistent with the requirements of Section 73.623 of the Rules in that (1) the principal city coverage requirements of Section 73.625(a) of the Rules would be met and (2) no NTSC or DTV station would receive interference from a KECI-DT Channel 5 operation in excess of the de minimis standard established in Section 73.623(c)(2) of the Rules.

4. We believe that Petitioner's proposal warrants consideration for the reasons set forth above. We therefore propose to modify Section 73.622(b) as requested by Petitioner.

5. Accordingly, we seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, as set forth below for the listed community:

<u>City</u>	<u>Present Channel No.</u>	<u>Proposed Channel No.</u>
Missoula, Montana	*27, 35, 36, 40	5, *27, 35, 36

The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

Interested parties may file comments on or before _____, and reply comments on or before _____, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the Petitioner, or its counsel or consultant, as follows:

Arthur B. Goodkind
 Holland & Knight LLP
 2099 Pennsylvania Avenue, N.W.
 Suite 100
 Washington, D.C. 20006-6801
 (202) 457-1815

The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules.

For further information concerning this proceeding, contact _____, Mass Media Bureau, (202) 418-1600. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited is specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the Petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comments which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the Notice of proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the Petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW, Washington, D.C.