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August 7, 2001

**DAVID A. O'CONNOR**  
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## RECEIVED

AUG - 7 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esq.  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

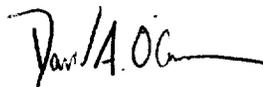
Re: Request to Deny KXFL Communications, Inc. Petition for Rulemaking to Substitute DTV Channel at Butte, Montana

Dear Ms. Salas:

Transmitted herewith, on behalf of Eagle Communications, Inc., ("Eagle") are an original and four copies of its "Request To Deny KXLF Communications, Inc. Petition For Rulemaking," which is being filed in connection with the above-referenced rule making request and with respect to RM-10172, a mutually exclusive rule making proposal filed by Eagle.

In the event there are any questions, please communicate with the undersigned.

Respectfully submitted,



David A. O'Connor

Enclosure

cc(w/enc:) Pamela Blumenthal, Esq. (FCC)

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**  
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AUG - 7 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

|                                 |   |          |
|---------------------------------|---|----------|
| In the Matter of                | ) |          |
|                                 | ) |          |
| Petition for Rule Making        | ) | RM-10172 |
| to Modify Channel Allotment     | ) |          |
| for Television Station KECI-DT, | ) |          |
| Missoula, Montana               | ) |          |
|                                 | ) |          |
| Petition for Rule Making        | ) | RM _____ |
| to Modify Channel Allotment     | ) |          |
| for Television Station KXLF-DT, | ) |          |
| Butte, Montana                  | ) |          |

To: Mass Media Bureau

**REQUEST TO DENY KXLF COMMUNICATIONS, INC.**  
**PETITION FOR RULEMAKING**

Eagle Communications, Inc. ("Eagle"), permittee of television station KECI-DT, Missoula, Montana, by its attorneys and pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, hereby requests that the Commission deny the Petition for Rulemaking filed by KXLF Communications, Inc. ("KXLF"), permittee of KXLF-DT, Butte, Montana. KXLF seeks allotment of Channel 5 as the DTV transitional channel for KXLF-DT.

KXLF and Eagle have each filed Petitions for Rulemaking ("Petitions") seeking to utilize Channel 5 for DTV operations in Butte and Missoula, respectively. The required co-channel spacing in Montana (Zone II) is 273.6 kilometers.<sup>1</sup> The proposed KXLF and Eagle transmitters would be approximately 164 kilometers apart, or almost 100 kilometers short-spaced. The proposals are thus mutually exclusive and only one Petition may be granted.

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<sup>1</sup> 47 C.F.R. § 73.609(a)(2).

For the reasons set forth below, the Commission should deny the KXLF Petition because it would result in an inefficient allotment that would not serve the public interest. In contrast, Eagle's proposed use of Channel 5 at Missoula would be an efficient use of the channel that would benefit the DTV transition process. The Commission should therefore issue a Notice of Proposed Rulemaking ("NPRM") with respect to Eagle's Petition.

**I. Background: The Two Mutually Exclusive Proposals.**

On March 21, 2001, Eagle filed a Petition for Rule Making requesting the substitution of Channel 5 in lieu of Channel 40 as the DTV transition channel to be paired with television station KECI-TV, Missoula, Montana. In its Petition, Eagle demonstrated that the use of Channel 5 in place of Channel 40 would 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 Missoula area. Moreover, Eagle's proposal is in full compliance with the Commission's rules concerning interference to other stations and would fully comply with the principal city coverage rules.

On January 10, 2001, KXLF filed a Petition for Rulemaking requesting amendment of the DTV Table of Allotments to substitute Channel 5 for Channel 15 as the DTV transition channel to be paired with television station KXLF-TV, Butte, Montana. KXLF acknowledged in its Petition that its proposal would violate Section 73.623(c)(2) of the Rules because its proposed use of Channel 5 would cause more than an additional two percent interference to the analog operation of KFBB-TV, Great Falls, Montana. Nonetheless, KXLF maintained that it had secured "in principle" an interference acceptance

agreement with KFBB-TV's licensee, KFBB Corporation.<sup>2</sup> KXLF did not include a copy of such an agreement with its Petition for Rulemaking.

## **II. The Substitution of Channel 5 in Butte Would Not Be in the Public Interest, and Therefore KXLF's Petition Should Be Denied.**

KXLF's proposed use of Channel 5 in Butte would be an inefficient use of that allotment owing to serious electrical noise problems that impair reception of low band VHF channels in the Butte area. Furthermore, KXLF admits that its proposal would cause more than an additional two percent interference to another television station. Given the inefficiencies of KXLF's proposal and the unacceptable loss of service to viewers that it would create, the KXLF proposal is not in the public interest and should be denied.

### A. Inefficient Allocation Due to Electrical Noise in the Butte Service Area.

Eagle is the licensee of KTVM-TV, Channel 6, Butte, Montana. For many years, reception of its Channel 6 operation has been seriously affected by impulse noise interference from electrical power lines and irrigation pumps operating in the Butte area. Eagle has been forced to deploy TV Translator stations using UHF channels in order to provide acceptable service to some viewers and cable headends in areas within its Grade B contour.

These interference problems were so severe, in fact, that Eagle took the extreme and highly unusual step of filing a Petition for Rulemaking proposing to substitute a UHF channel (Channel 33) for a low band VHF channel (Channel 2) as the DTV transition channel to be paired with television station

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<sup>2</sup> KXLF Petition at 2-3.

KTVM(TV) in Butte.<sup>3</sup> Eagle requested a UHF channel notwithstanding the substantial increase in construction and operation costs it will incur by doing so.<sup>4</sup> The Commission accepted Eagle's showing, specifically citing the severe impulse noise issue, and made the substitution.<sup>5</sup>

In light of the serious and documented reception difficulties with low band VHF operations in Butte, it would be a highly inefficient use of spectrum to allot Channel 5 to the Butte DMA. Accordingly, KXLF's Petition does not serve the public interest and should be denied.

B. Loss of Service that Would Be Created By a Channel 5 Butte Allotment.

Even if the use of Channel 5 in Butte were not foreclosed for electrical noise reasons, KXLF's petition should be denied because it would create a substantial loss of service to current viewers of another broadcast television station.

KXLF admits in its Petition that its proposal would result in an impermissible level of additional interference to KFBB-TV, Great Falls, MT.

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<sup>3</sup> Copies of the Engineering Statement and Declaration accompanying Eagle's Butte Petition for Rulemaking are attached hereto as Attachments A and B, respectively. In light of Eagle's own experiences with severe electrical power line interference on its low band VHF channel in Butte, Eagle is puzzled by KXLF's decision to request a change from a UHF channel to a low band VHF channel in the same market. Should KXLF nonetheless wish to pursue that objective, Eagle's former DTV allotment in Butte, Channel 2, is now available.

<sup>4</sup> The costs associated with UHF operations are far higher than those associated with VHF operations. In fact, of the approximately 141 DTV channel change Petitions for Rulemaking received by the Commission, only five other petitioners (4% of all petitioners) have requested a change in allotment from a VHF channel to a UHF channel. See <http://www.fcc.gov/mmb/vsd/files/dtvchan.html> (visited Aug. 1, 2001).

<sup>5</sup> *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Butte, Montana), Report & Order*, MM Docket No. 01-29, DA 01-1222 (rel. May 18, 2001).

KXLF indicates that interference to KFBB-TV will increase by an additional 4.3%, which is over twice the amount allowed under the Commission's rules.<sup>6</sup>

KXLF maintains that an interference agreement has been reached between KXLF and KFBB-TV "in principle" and that a copy of an agreement will be submitted to the Commission "as soon as finalized."<sup>7</sup> To the best of Eagle's knowledge, however, no such agreement has been submitted to the Commission, despite the fact that KXLF's Petition was filed well over six months ago.

Moreover, even if there is a private agreement between the parties, such an agreement would not cure the loss of service to viewers of KFBB-TV. An allotment that would cause such a loss of service would not be in the public interest, particularly when a more efficient use of the channel that would cause no such impermissible interference is an available alternative. Accordingly, the KXLF Petition should be denied as contrary to the public interest.

### **III. Eagle's Proposal Is in the Public Interest.**

In contrast to KXLF's Petition, the channel change proposed by Eagle in Missoula will serve the public interest by resulting in a more efficient allocation. Unlike the Butte area, reception of low band VHF stations in the Missoula area is not affected by sources of serious electrical noise. To the contrary, as noted in Eagle's Petition, use of the VHF channel will improve DTV reception in the mountainous area served by KECI-TV.

Moreover, unlike KXLF's proposal, Eagle's proposal is well within the Commission's *de minimis* standard with respect to interference to any other

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<sup>6</sup> See 47 C.F.R. § 73.623(c)(2).

<sup>7</sup> KXLF Petition at 2-3.

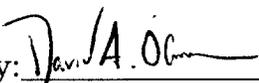
broadcast station and is thus not contingent on the acceptance of interference by other broadcast stations. And finally, Eagle's use of VHF Channel 5 in lieu of UHF Channel 33 will result in cost-savings that will help bring about a more rapid transition to DTV operations in the Missoula market. Indeed, the Commission has already determined in another Missoula channel substitution case that a change from a UHF channel to a VHF channel was warranted because such a change would reduce the DTV build-out costs of another Missoula station, KPAX-TV.<sup>8</sup>

#### **IV. Conclusion.**

For the reasons set forth above, Eagle respectfully requests that the Commission deny the KXLF Petition and release an NPRM seeking comment on Eagle's Petition.

Respectfully submitted,

EAGLE COMMUNICATIONS, INC.

By:   
\_\_\_\_\_  
Arthur B. Goodkind  
David A. O'Connor  
HOLLAND & KNIGHT LLP  
2099 Pennsylvania Ave., N.W.  
Suite 100  
Washington, D.C. 20006  
Tel: (202) 955-3000

Its Attorneys

Dated: August 7, 2001

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<sup>8</sup> See Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Missoula, Montana), Report & Order, MM Docket No. 01-15, RM-10030, DA 01-1765 (rel. July 27, 2001).

**Attachments:**

A – Engineering Statement of Jules Cohen

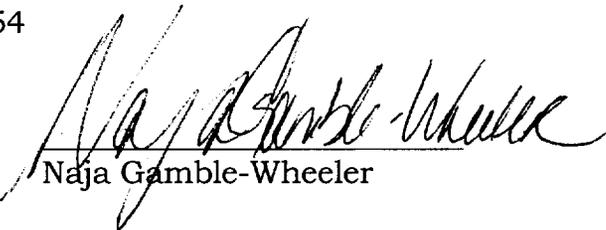
B – Declaration of C.J. Cannaliato

**CERTIFICATE OF SERVICE**

I, Naja Gamble-Wheeler, an employee of Holland & Knight LLP, hereby certify that on August 7, 2001, a copy of the foregoing "Request to Deny KXLF Communications, Inc. Petition for Rulemaking" was served, via first class mail, to the following:

Kevin F. Reed, Esq.  
Scott S. Patrick, Esq.  
Nam E. Kim, Esq.  
Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Ave., NW, Suite 800  
Washington, DC 20036-6802

Pamela Blumenthal\*  
Federal Communications Commission  
Room- 2-A762  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

  
Naja Gamble-Wheeler

\* via hand delivery

WAS1 #999797 v3

*Jules Cohen, P.E.*  
*Consulting Engineer*

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**ENGINEERING STATEMENT  
PREPARED ON BEHALF OF EAGLE COMMUNICATIONS, INC.  
KTVM-DT, BUTTE, MONTANA**

This statement was prepared on behalf of Eagle Communications, Inc. ("Eagle") in support of a petition to change the digital channel assignment of KTVM-DT, Butte, Montana, from 2 to 33. Eagle is the licensee of KTVM(TV), Butte, Montana, operating on channel 6. The experience of KTVM, as detailed in an accompanying Declaration of C.J. Cannaliato, is that impulse noise interference is a serious problem on NTSC channel 6. The identified sources of the interference are power lines and irrigation pumps. The local power company has acknowledged that power lines are an originator of the interference but the sources are so widespread that correction would constitute an intolerable economic burden.

In consideration of the magnitude of the interference to channel 6, the inescapable conclusion is that interference would be greater on the lower frequency channel 2. To avoid the problem of interference, the use of channel 33 is proposed in lieu of 2. As will be shown below, channel 33 can be used at the KTVM site without causing to, or receiving interference from any other full service or Class A Low Power television station.

Operating parameters of KTVM-DT on channel 33 are proposed to include average effective radiated power of 1,000 kilowatts, with the radiation center of a nondirectional antenna at 39 meters above ground, 2,552 meters above mean sea level. Height above average terrain would be 576

*Jules Cohen, P.E.*  
*Consulting Engineer*

Engineering Statement  
KTVM-DT, Butte, Montana

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meters. Location of the antenna would be the same as the FCC had specified for operation on channel 2. Geographic coordinates of the registered tower (ASR No.1000778) are: 46° 00' 27" North Latitude, 112° 26' 30" West Longitude.

Studies made in accordance with the requirements of Section 73.623(c) of the Commission rules demonstrate that the proposal satisfies the coverage and allocation criteria of the rules. The Butte community reference point is approximately seven kilometers west of the transmitter site. Antenna height above average terrain in the Butte direction is in excess of 800 meters. The f(50,90), 41 dB $\mu$  contour, calculated by prescribed FCC procedures, would extend more than 130 kilometers from the transmitter in a westerly direction, thus satisfying the community coverage requirement of Section 73.625(a).

A computer using an Alpha processor was employed in conjunction with the FCC's FLR software to perform allotment studies taking into account both NTSC and DTV allocation factors. The study indicated that only one full service television facility was potentially affected by KTVM-DT operating on channel 33 as proposed. That facility is a new NTSC station at Great Falls, Montana, proposed to operate on NTSC channel 26 with peak visual effective radiated power of 5,000 kilowatts and height above average terrain of 175 meters. Separation from the KTVM-DT site

*Jules Cohen, P.E.*  
*Consulting Engineer*

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Engineering Statement  
KTVM-DT, Butte, Montana

Page 3

to the proposed channel 26 site is approximately 192 kilometers. As expected at that distance, the FLR program showed no interference to the proposed Great Falls station.

The interference analysis was extended to Class A Low Power television stations. Considering co-channel, adjacent channels and "taboo" channels, only two facilities were found within 250 kilometers (300 kilometers in the co-channel case). K26DE, Bozeman, Montana, is approximately 100 kilometers from the KTVM site and K25CL, Pablo/Ronan, Montana, is approximately 212 kilometers from the KTVM site. At such distances, the N-7 and N-8 stations cannot be affected adversely.

The FLR analysis of the proposed KTVM-DT operation shows a population of 127,866 persons within the noise-limited contour and not affected by terrain losses. This constitutes a 92.7 percent match with the KTVM NTSC channel 6 Grade B coverage not affected by terrain losses.

~~The DTV/NTSC area match is 80.2 percent. The channel 33 operation would not receive~~  
interference from any full service NTSC or DTV operation.

The conclusion of the study is that channel 33 is a suitable replacement for channel 2 at Butte and will avoid the problem of impulse noise interference prevalent in the Butte vicinity in the low VHF band.

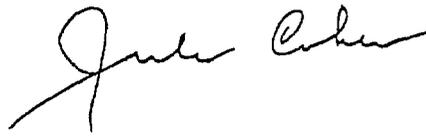
*Jules Cohen, P.E.*  
*Consulting Engineer*

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Engineering Statement  
KTVM-DT, Butte, Montana

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on November 2, 2000.

A handwritten signature in cursive script, appearing to read "Jules Cohen".

Jules Cohen, P.E.

### Declaration of C.J. Cannaliato

I am employed as the Director of Engineering for Eagle Communications, Inc., licensee of KTVM-TV, channel 6 from Butte, MT. I was employed by Eagle Communications in this capacity from September 1983 until July 1995 and then rehired in October 1999. I have more than thirteen years of experience working for this organization, much of that time working specifically with KTVM-TV.

KTVM-TV operates on analog TV channel 6 with an ERP of 100 Kilowatts, the maximum allowed. My experiences in checking the coverage of this station has shown that impulse noise originating from power lines and irrigation pumps is a serious problem in many locations. The power lines are quite old and the connections have oxidized over the years and now generate noise which severely degrades the off-air reception of KTVM-TV.

I would like to cite three specific situations concerning reception problems in the KTVM TV coverage area: Dillon, MT (Beaverhead County), Bozeman, MT (Gallatin, County) and Ennis, MT (Madison County).

In the case of Dillon, MT, complaints to the Montana Power Company regarding impulse noise were so numerous that in the summer of 1990, a representative of the Montana Power Company approached me as to the feasibility and cost of installing a translator station as an alternative way to provide service to the community of Dillon. We did a site survey and measured the KTVM-TV signal to be 56 dbu which is 9 db more than that of a Grade B signal but the video was seriously impaired by the electrical impulse noise. We determined that the only way to improve the signal to this community was to feed a translator via microwave. In August, 1990, the Montana Power Company agreed to fund 50% of the cost of that project and K51DW was licensed (fed by microwave station WMU807) and constructed.

The same problem existed in Bozeman, Montana and a microwave fed translator rebroadcasting KTVM-TV was again the only practical solution. In November, 1992, a translator license was granted to Eagle Communications, Inc. for K42BZ to serve the community of Bozeman, MT (fed by microwave station WLP241). This translator (later converted to an LPTV license) was required because of impulse noise problems with over the air reception of KTVM TV, despite the fact that this community is totally within the Grade B contour of KTVM TV.

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While the community of Ennis, MT has a translator to serve it, the translator is fed by KTVM TV directly as no microwave path exists to serve this community. In this situation we attempted to improve the received signal by stacking antennas. This resulted in an improvement in signal but it also increased the impulse noise. We also attempted to "phase cancel" the noise, but this was not possible because the impulse noise was originating from many locations. The problem in Ennis has never been solved and viewers have become unhappily resigned to impaired TV signals.

I am concerned that this noise problem will create a worse situation with digital broadcasting. KTVM TV has been assigned channel 2 for its digital operation and it is safe to assume that impulse noise problems which currently exist on TV channel 6 will probably be worse on TV

channel 2. Indeed, impulse noise may not only impair reception of DTV signals on channel 2, it may make DTV reception impossible or inconsistent.

I declare under penalty of perjury that the statement above is true.

*Cannaliato*

C.J. Cannaliato

*10-30-00*

Date