

DOCKET FILE COPY ORIGINAL

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

In the Matter of)	
)	
)	
Amendment of Section 73.622(i),)	MB Docket No. 11-20
Post-Transition Table of DTV Allotments,)	RM-11619
Television Broadcast Stations.)	
(Kalispell, Montana))	

MAILED
MAR -1 2011
FCC Mail Room

NOTICE OF PROPOSED RULEMAKING

Adopted: February 7, 2011

Released: February 9, 2011

Comment Date: [30 days after date of publication in the Federal Register]

Reply Comment Date: [45 days after date of publication in the Federal Register]

By the Chief, Video Division, Media Bureau:

1. The Commission has before it a petition for rulemaking filed by Montana State University ("MSU") requesting that we add channel *46, Kalispell, Montana, which is already allotted in the Pre-Transition DTV Table of Allotments ("Pre-Transition Table"),¹ to the Post-Transition Table of DTV Allotments ("Post-Transition Table").²

2. The Commission allotted channel *46 at Kalispell to the Pre-Transition Table in 2004,³ and issued a subsequent *Public Notice* soliciting applications for the allotment.⁴ Pursuant to the *Public Notice*, the Commission received competing mutually-exclusive applications from MSU and Flathead Adventist Radio, Inc. ("FAR").⁵ Under the channel election process adopted by the Commission to create the Post-Transition Table, only licensees and permittees of stations participated in the election process.⁶ Accordingly, as applicants for a construction permit for a new station at Kalispell, MSU and FAR did not

¹ 47 C.F.R. § 73.622(b).

² 47 C.F.R. § 73.622(i).

³ Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Kalispell, Montana), *Report and Order*, 19 FCC Rcd 23149 (Vid. Div. 2004) ("*Kalispell Allotment Order*").

⁴ Filing Window for New Digital Noncommercial Educational Reserved Channel Television Stations for Channel *46 at Kalispell, Montana; Channel *21 at Great Falls, Montana; and Channel *16 at Billings, Montana, *Public Notice*, 21 FCC Rcd 7183 (MB 2006).

⁵ FCC File Nos. BNPEDT-20060809AJQ and BNPEDT-20060810ABD.

⁶ Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 03-15, *Report and Order*, 19 FCC Rcd 18279, 18307 (2004).

have an opportunity to request that their applied-for channel be allotted for post-transition use.

3. After the conclusion of the DTV Transition, MSU and FAR entered into a settlement agreement proposing the grant of MSU's application and the dismissal of FAR's.⁷ MSU now proposes that the Commission transfer the Kalispell channel *46 allotment from the Pre-Transition Table to the Post-Transition Table, asserting that "With the settlement now in place and [MSU's] Application now ripe for grant, the allotment may be transferred to the Post-Transition Table."⁸ MSU also notes that the Commission may grant this proposal without waiver of the Commission's freeze on new DTV allotments,⁹ because the "Kalispell allotment is not new – the Commission already approved it."¹⁰ MSU further asserts that the grant of its rulemaking petition and application will serve the public interest "by eliminating a substantial noncommercial educational white area in northwest Montana of over 140,000 people."¹¹

4. We believe that MSU's proposal warrants consideration. The Kalispell, Montana channel *46 allotment can be transferred from the Pre-Transition Table to the Post-Transition Table, as proposed, in compliance with the principal community coverage requirements of Section 73.625(a) of the Commission's rules,¹² at coordinates 48-00-48 N. and 114-21-55 W.¹³ In addition, we find that MSU's proposal meets the technical requirements set forth in Sections 73.616 and 73.623 of the Commission's rules.¹⁴ We propose to add channel *46 at Kalispell to the Post-Transition Table, Section 73.622(i) of the Commission's rules, with the following specifications:

City and State	Channel	Power (kW)	Antenna HAAT (m)
Kalispell, Montana	*46	186	830

5. Accordingly, we seek comments on the proposed amendment of the Post-Transition Table, Section 73.622(i) of the Commission's rules, for the community listed below, to read as follows:

⁷ MSU Petition at 2.

⁸ *Id.*

⁹ Freeze on the Filing of Certain TV and DTV Requests for Allotment of Service Area Changes, *Public Notice*, 19 FCC RCD 14810 (MB 2004).

¹⁰ MSU Petition at 7 (citing *Kalispell Allotment Order*).

¹¹ *Id.* at 2.

¹² *Id.* at § 73.625(a).

¹³ The proposed facility is located within the Canadian coordination zone, and Canadian concurrence was obtained during the course of the required negotiations with the Canadian government prior to Commission adoption of the Post-Transition Table of DTV Allotments.

¹⁴ 47 C.F.R. §§ 73.616 and 73.623.

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Kalispell, Montana	9	9, *46

6. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. Pursuant to Section 73.623(h) of the rules, mutually-exclusive applicants will be provided a 90-day period of time, from the date of a public notice identifying mutually-exclusive proposals, to resolve their mutual-exclusivity via engineering amendment or settlement.¹⁵ If we receive an application on or before the date for filing initial comments in this proceeding, which proposes a facility which is mutually-exclusive with the proposal set forth herein, we will issue a public notice and the parties will have 90 days within which to resolve their mutual-exclusivity. If the parties resolve their mutual-exclusivity, we will complete the rulemaking process by issuing the appropriate order. If the parties are unable to resolve their mutual-exclusivity, we will terminate this proceeding and dismiss the application.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before [30 days after publication in the Federal Register] and reply comments on or before [45 days after publication in the Federal Register], and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Margret L. Miller, Esq.
 Dow Lohnes PLLC
 1200 New Hampshire Avenue, N.W.
 Suite 800
 Washington, D.C. 20036-6802

8. Parties must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at the FCC Headquarters Building located at 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. The filing hours at this location are Monday through Friday, 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, Maryland 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to FCC Headquarters at 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the

¹⁵ *Id.* at § 73.623(h)(3).

Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary.¹⁶ Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the DTV Table of Allotments, Section 73.622(i). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, § 3506(c)(4).

10. For further information concerning the proceeding listed above, contact Adrienne Y. Denysyk, 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 in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if 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 any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket 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 comment 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 Division
Media Bureau

¹⁶ *Id.* at § 1.7.

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the DTV Table of Allotments, 47 C.F.R. Section 73.622(i), 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 the 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.) Because the Commission has not yet lifted its freeze on the filing of petitions for rulemaking to establish new DTV channel allotments and for changes in community of license,¹⁷ we will not consider counterproposals which propose new allotments or changes in community of license.

(b) With respect to petitions for rule making which conflict with the proposal 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 47 C.F.R. Sections 1.415 and 1.420, 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. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c)). Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 12th Street, Room TW-A325, S.W., Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an

¹⁷ Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes, *Public Notice*, 19 FCC Rcd 14810 (MB 2004).

original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission. An electronic copy should also be sent to adrienne.denysyk@fcc.gov.

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 Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C. 20554.