

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

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

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 26, 2011

Released: April 28, 2011

By the Chief, Video Division, Media Bureau:

1. The Commission has before it a Notice of Proposed Rulemaking issued in response to a petition for rulemaking filed by Montana State University ("MSU"). MSU requests that channel *46, which was allotted to Kalispell, Montana in the Pre-Transition DTV Table of Allotments ("Pre-Transition Table"), be transferred to the Post-Transition Table of DTV Allotments ("Post-Transition Table"). MSU filed comments and reply comments reaffirming its interest, and Flathead Adventist Radio, Inc. ("FAR") filed comments in support of the rulemaking proceeding. No other comments were received.

2. The Commission allotted channel *46 at Kalispell to the Pre-Transition Table in 2004, and issued a subsequent Public Notice soliciting applications for the allotment. Pursuant to the Public Notice, the Commission received competing mutually-exclusive applications from MSU and FAR. Under the channel election process adopted by the Commission to create the Post-Transition Table, only licensees and

1 Kalispell, Montana, 26 FCC Rcd 1145 (Vid. Div. 2011).

2 47 C.F.R. § 73.622(b).

3 47 C.F.R. § 73.622(i).

4 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").

5 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).

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

permittees of stations participated in the election process.⁷ Accordingly, as applicants for a construction permit for a new station at Kalispell, MSU and FAR did not have an opportunity to request that their applied-for channel be allotted for post-transition use. 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.⁸

3. We believe the public interest will be served by transferring channel *46, Kalispell, Montana from the Pre-Transition Table to the Post-Transition Table. MSU states 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."⁹ MSU notes that the Commission may grant this proposal without waiver of the Commission's freeze on new DTV allotments,¹⁰ because the "Kalispell allotment is not new – the Commission already approved it."¹¹ MSU further explains 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 . . ."¹² and will "further the Congressional mandate in Section 396(a)(9) of the Communications Act 'to ensure that all citizens of the United States have access to public telecommunications services. . . .'¹³ FAR also notes that grant of this rulemaking proceeding will "hasten the inauguration of the first local non-commercial educational broadcast television service to the Kalispell community."¹⁴

4. The Kalispell, Montana channel *46 allotment can be transferred 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, at coordinates 48-00-48 N. and 114-21-55 W.¹⁵ 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 rules¹⁶ with the following specifications:

⁷ 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).

⁸ MSU Petition at 2.

⁹ *Id.*

¹⁰ Freeze on the Filing of Certain TV and DTV Requests for Allotment of Service Area Changes, *Public Notice*, 19 FCC Rcd 14810 (MB 2004).

¹¹ MSU Petition at 7 (citing *Kalispell Allotment Order*).

¹² MSU Petition at 2.

¹³ MSU Comments at 6.

¹⁴ FAR Comments at 2.

¹⁵ 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 Pre-Transition and Post-Transition Table of DTV Allotments.

¹⁶ 47 C.F.R. §§ 73.616 and 73.623.

City and State	Channel	Power (kW)	Antenna HAAT (meters)	Service Pop. (thous.)
Kalispell, Montana	*46	186	830	111

5. Accordingly, pursuant to the authority contained 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 ORDERED, That effective 30 days after date of publication of this Report and Order in the Federal Register, the Post-Transition Table of DTV Allotments, Section 73.622(i) of the Commission's rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City and State</u>	<u>Channel Nos.</u>
Kalispell, Montana	9, *46

6. IT IS FURTHER ORDERED, That within 45 days of the effective date of this Order, Montana State University shall amend the pending Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast (FCC Form 340) of the Board of Regents of the Montana University System,¹⁷ specifying post-transition channel *46 at Kalispell, Montana.

7. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning the proceeding listed above, contact Adrienne Y. Denysyk, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁷ File No. BNPEDT-20060809AJQ.