

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Second Periodic Review of the |) | |
| Commission’s Rules and Policies |) | MB Docket No. 03-15 |
| Affecting the Conversion |) | RM-9832 |
| To Digital Television |) | |
| |) | |

To: The Commission

COMMENTS

Cordillera Communications, Inc. (“Cordillera”), by its attorneys, hereby submits these Comments in response to the Commission’s *Notice of Proposed Rule Making* in its periodic review of the rules and policies affecting the conversion to digital television.¹ Through subsidiaries, Cordillera owns ten commercial television stations licensed to communities located largely in the western United States. By participating in this proceeding, Cordillera continues its long-standing support of the Commission’s efforts to facilitate the transition of the nation’s television system to digital technology.

By these Comments, Cordillera urges the Commission (i) to allow stations with pending DTV channel change rulemakings to avoid construction until the Commission has reached a determination and (ii) to defer, until the next DTV periodic review, a decision regarding replication and maximization deadlines. Adoption of these proposals would help ensure the continued success of the DTV rollout – especially for smaller-market stations.

¹ Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, *Notice of Proposed Rule Making*, MB Docket No. 03-15, FCC 03-8 (rel. Jan. 27, 2003) (“*Notice*”).

I. THE COMMISSION SHOULD ALLOW STATIONS WITH PENDING DTV CHANNEL CHANGE PROCEEDINGS TO DEFER CONSTRUCTION UNTIL THE RESPECTIVE RULEMAKING IS COMPLETED.

In the *Notice*, the Commission asks whether stations that have been unable to construct digital facilities because they do not yet have the necessary authorization should be forced to construct and operate digital facilities pursuant to special temporary authority.² Stations that may be affected by this policy are those that have not yet been able to construct because their DTV channel change proceedings remain pending. Cordillera urges the Commission to allow stations with pending channel change proceedings to defer construction until the channel change rulemaking is completed. If the Commission required these stations to construct prematurely, the stations would be forced to invest significant resources needlessly in channel-specific equipment that likely would have to be discarded upon resolution of the DTV channel change proceeding.

Since its adoption of the DTV Table of Allotments, the Commission has recognized the intricacies of DTV operations and promised to provide broadcasters with flexibility in developing alternate allotment proposals,³ which many broadcasters have done. Within the past few years, the Commission has diligently processed numerous petitions for rulemaking to amend the DTV Table of Allotments and granted DTV channel changes in light of the resultant public interest benefits. In accordance with the Commission's rulemaking procedures, Cordillera has filed petitions for rulemaking requesting DTV channel changes for seven of its stations. The Commission has issued a Report and Order in four of these proceedings, and upon grant,

² *Notice* at ¶¶ 61, 62.

³ *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order*, MM Docket 87-268, 12 FCC Rcd 14588, ¶ 172 (1997).

Cordillera has proceeded promptly to implement the channel change and construct the stations. These DTV channel changes have served the public interest by improving signal coverage and making more efficient use of the broadcast spectrum.⁴ Cordillera's other three DTV channel change proceedings remain pending.⁵

⁴ See Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Great Falls, Montana), *Report and Order*, MM Docket 00-246, DA 03-1053 (rel. April 9, 2003) (finding that the proposed channel change from 44 to 7 would serve the public interest by permitting KRTV-DT to reduce its building costs while improving the signal coverage in the Great Falls DMA); Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Lexington, Kentucky), *Report and Order*, MM Docket 01-83, 16 FCC Rcd 14484, (rel. July 27, 2001) (finding that the proposed channel change from 22 to 39 would serve the public interest by reducing WLEX-DT's build-out costs while eliminating the mutual exclusivity between WLEX-DT's and WAOM-DT's applications); Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Missoula, Montana), *Report and Order*, MM Docket 01-15, 16 FCC Rcd 14486, (rel. July 27, 2001) (finding that the proposed channel change from 35 to 7 would serve the public interest by permitting KPAX-DT to reduce its build-out costs by enabling the station to share facilities and eliminating potential adjacent channel interference problems with KTMF-DT, DTV channel 36 at Missoula); Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Bozeman, Montana), *Report and Order*, MM Docket 01-30, 16 FCC Rcd 9278, (rel. May 1, 2001) (finding that the proposed channel change from 16 to 13 would serve the public interest by permitting KBZK-DT to overcome technical difficulties associated with the mountainous terrain while facilitating the use of a common antenna site).

⁵ On May 24, 2002, the FCC released a Notice of Proposed Rule Making in response to a Petition for Rule Making filed on January 1, 2001, by KTVQ Communications, Inc. proposing a DTV channel change for KTVQ-DT, Billings, Montana. See Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Billings, Montana), *Notice of Proposed Rule Making*, MB Docket 02-116, DA 02-1198 (rel. May 24, 2002). The proceeding remains pending.

On January 10, 2001, KXLF Communications, Inc. filed a petition for rulemaking proposing a DTV channel change for KXLF-DT, Butte, Montana. A Notice of Proposed Rule Making has not yet been released.

On October 13, 2000, the FCC released a Notice of Proposed Rule Making in response to a Petition for Rule Making filed on November 1, 1999, by KVOA Communications, Inc. proposing a DTV channel change for KRIS-DT, Corpus Christi, Texas. See Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Corpus Christi, Texas), *Notice of Proposed Rule Making*, MM Docket 00-198, DA 00-2303 (rel. Oct. 13, 2000). The proceeding remains pending.

The Commission previously has recognized that construction of a DTV station should be postponed pending the outcome of its DTV channel change rulemaking. The Commission therefore has refused to require stations with pending DTV channel change rulemakings to construct prematurely and has extended the construction deadline multiple times for such stations.⁶ No basis exists for the Commission to change course abruptly and force stations with pending DTV channel change proceedings to construct prematurely in the face of regulatory uncertainty. There is no indication that stations have abused the channel change process. To the contrary, all evidence suggests that the rulemakings have resulted in numerous improvements to the DTV Table.

If the Commission were to force stations with pending DTV channel change proceedings to construct digital facilities, a station either would be required to construct facilities for its initially allotted DTV channel, which it may then need to abandon upon grant of the DTV channel change, or for its proposed DTV channel, which the Commission could ultimately deny. Either choice could cost a station as much as \$500,000 to replace equipment to accommodate the new channel and would force it to waste scarce resources that would be better directed toward developing and providing innovative new DTV technologies, such as high definition television or multicasting.

⁶ See, e.g., Requests for Further Extension of the Digital Television Construction Deadline, *Order*, FCC 03-22 (rel. Feb. 6, 2003) (granting extension requests for WTVJ(TV), Miami, Florida, and WTIC(TV), Hartford, Connecticut, because both stations had pending DTV allotment rule makings with the Commission); Requests for Further Extension of the November 1, 2000, Digital Television Construction Deadline, *Order*, 16 FCC Rcd 8122 (rel. Apr. 5, 2001) (granting extension requests for WTVJ(TV), Miami, Florida, and WTIC(TV), Hartford, Connecticut, because both stations had pending DTV allotment rule makings with the Commission).

For the reasons stated above, the Commission should continue to allow stations with pending DTV channel change proceedings to await resolution of the proceeding prior to constructing their digital facilities.

II. THE COMMISSION SHOULD ENCOURAGE THE DEVELOPMENT OF NEW DTV SERVICES BY DEFERRING THE REPLICATION AND MAXIMIZATION DEADLINES UNTIL THE NEXT PERIODIC REVIEW.

In the *Notice*, the Commission proposes deadlines – July 1, 2005 for top-four affiliates in markets 1-100 and July 1, 2006 for the rest – by which commercial stations must build-out full facilities and replicate and/or maximize their service areas.⁷ Cordillera encourages the Commission to defer a decision on DTV replication and maximization deadlines until the next DTV periodic review – especially for smaller-market stations. Cordillera recognizes that replication of service is a critical element to the success of DTV but believes that broadcasters already are covering a majority of their population with reduced power facilities and need to acquire additional experience with actual DTV operations before expending resources to construct full power facilities. Deferral of the replication and maximization deadlines until the next periodic review also will afford broadcasters greater flexibility to experiment with innovative new DTV services. Given that current estimates provide that the DTV transition will extend well beyond 2006,⁸ the Commission will have time in the next periodic review to establish future replication and maximization deadlines as circumstances warrant.

⁷ *Notice* at ¶ 33.

⁸ *See, e.g.*, U.S. General Accounting Office, *Additional Federal Efforts Could Help Advance Digital Television Transition*, GAO-03-7 (Nov. 2002); Bill McConnell, "GAO to FCC: Pick a DTV Date," *Broadcasting and Cable*, p. 24 (Dec. 9, 2002) (stating that the end of the DTV transition could be well beyond 2011).

Even with reduced power facilities, broadcasters already are covering the great majority of their centrally located analog service population with digital signals. For example, Cordillera's station KPAX-DT (Missoula, Montana, 169th-ranked DMA) is covering a majority of its analog population with its reduced power facilities.⁹ As demonstrated in the attached technical exhibits, KPAX-DT, at reduced power, is serving 168,305 persons within its 36 dBu contour, or 90% of the population covered by the digital facilities authorized in its construction permit or 91% of the population within the Grade B contour of the station's analog facilities.¹⁰ To construct full power facilities for KPAX-DT, Cordillera will need to spend an additional \$700,000, which includes approximately \$400,000 for antenna and tower work and approximately \$300,000 for additional transmitter upgrades. The \$700,000 estimated cost of converting reduced power to full power facilities is typical for Cordillera's five Montana stations. Forcing small market stations to spend significant sums of money to reach a marginal percentage of the population seems unreasonable when small market broadcasters already are covering a majority of their service population and instead could put those funds to a better uses to support the DTV transition.

By deferring the replication and maximization deadlines, broadcasters instead would have greater flexibility to direct their resources toward cultivating and experimenting with innovative new DTV services. For example, since commencing operation, KPAX-DT already has provided its viewers with high definition programming. In Cordillera's view, offering viewers high definition television programming with reduced power facilities was preferable to

⁹ Emergency special temporary authority for KPAX-DT to commence reduced power operation granted on March 27, 2003; Special temporary authority for KPAX-DT to commence reduced power operation granted on April 14, 2003 (FCC File No. BDSTA-20030327AIP).

¹⁰ Technical exhibits prepared by Cohen, Dippell and Everist, P.C., at Attachment.

offering standard definition television programming with full power facilities. As the Commission states, the replication and maximization deadlines need to “allow stations sufficient time to provide full replication and maximization service while also ensuring that stations continue to progress toward an all-digital broadcast service.”¹¹ Progression toward an all-digital broadcast service should not be measured solely by the number of replicated and maximized facilities that are on the air but also by the number of new DTV technologies and unique services offered to viewers. Demonstrating that consumers can access expanded DTV services unavailable on analog TV should spur them to embrace DTV and purchase DTV equipment. At this point, it is still premature to decide on replication and maximization deadlines that would best achieve these goals.

Deferral of the replication and maximization deadlines also is appropriate because much of the FCC regulatory landscape still is in flux. For example, the Commission has not yet initiated a rulemaking to establish rules governing the conversion of low power television and translator stations to digital technology, and it is uncertain when such rules ultimately will be adopted. The process of full service replication will be particularly complicated for small market broadcasters in rural and mountainous geographic areas, given that many of these stations currently rely on translators and low power television stations to provide much of their over the air service. The rural stations must not only plan the construction of full power or maximized DTV facilities but also consider how to deliver their DTV signal to areas currently served by analog translators. Once the rules governing the DTV transition for translators are adopted, broadcasters will need to analyze their DTV operations and, if necessary, make appropriate changes to their business plan before moving forward with full service replication.

¹¹ *Notice* at ¶ 32.

Imposition of a regulatory replication incentive at this time, when no evidence of a market failure exists, is premature. As the Commission has observed, stations will replicate and maximize as a result of market forces in the absence of a regulatory deadline:

Although we have declined to make full signal replication mandatory, we continue to believe that most DTV broadcasters eventually will replicate their NTSC service areas with DTV service...Once stations commence at least the minimum level of digital service, we believe that DTV set penetration levels will increase, thereby driving demand for digital programming and providing broadcasters with an incentive to expand digital service.”¹²

As noted in the last periodic review, by deferring the replication and maximization deadlines, the Commission hoped “to permit stations to elect a more gradual build out of their DTV facilities, and thereby increase the number of stations capable of commencing digital service to at least their core communities by the May 2002 and May 2003 construction deadlines.”¹³ This undoubtedly has been the case. During this periodic review, by deferring the replication and maximization deadlines, the Commission can permit stations to experiment with DTV technologies and develop innovative new services. Accordingly, Cordillera urges the Commission to defer a decision on the replication and maximization deadlines until the next DTV periodic review.

CONCLUSION

Cordillera is proud of its stations’ longstanding service to the smaller television markets in the western regions of the nation and it fully intends to continue this service well into the twenty-first century. By adopting Cordillera’s proposals herein, the Commission can help small

¹² *Id.* at ¶ 30.

¹³ *Id.*

market broadcasters realize their full DTV potential and ensure that the DTV transition in smaller markets will enhance broadcast service instead of constraining it.

Respectfully submitted,

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ATTACHMENT

Cohen, Dippell and Everist, P.C.

NTSC AND DT POPULATION AND AREA DATA
KPAX-TV, MISSOULA, MONTANA
APRIL 2003

KPAX-DT Within 36 dBu Contour
(Low Power-STA Request)

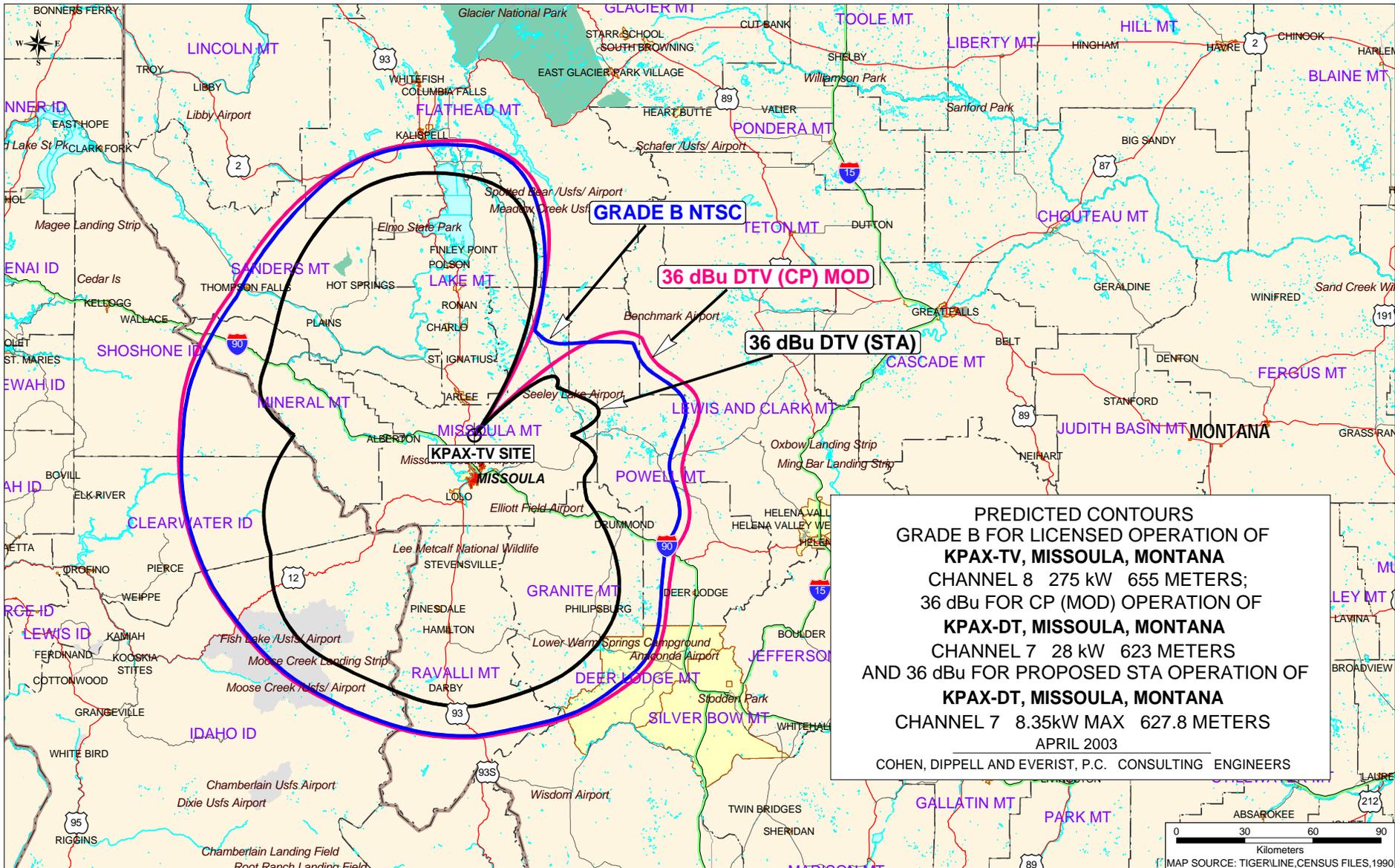
| | |
|-----------------|---------------|
| 2000 population | 168,305 |
| Area | 27,262 sq. km |

KPAX-TV Within Grade B Contour
(Licensed)

| | |
|-----------------|---------------|
| 2000 population | 183,951 |
| Area | 41,702 sq. km |

KPAX-DT Within 36 dBu Contour
(Construction Permit)

| | |
|-----------------|---------------|
| 2000 population | 186,454 |
| Area | 43,072 sq. km |



**PREDICTED CONTOURS
 GRADE B FOR LICENSED OPERATION OF
 KPAX-TV, MISSOULA, MONTANA
 CHANNEL 8 275 kW 655 METERS;
 36 dBu FOR CP (MOD) OPERATION OF
 KPAX-DT, MISSOULA, MONTANA
 CHANNEL 7 28 kW 623 METERS
 AND 36 dBu FOR PROPOSED STA OPERATION OF
 KPAX-DT, MISSOULA, MONTANA
 CHANNEL 7 8.35kW MAX 627.8 METERS
 APRIL 2003
 COHEN, DIPPELL AND EVERIST, P.C. CONSULTING ENGINEERS**