ORIGINAL

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

In the Matter of PMCM TV, LLC, Licensee of WJLP, Middletown Township, New Jersey v. RCN Telecom Services, LLC .	)	CSR-8917-M Docket No. 16-25
In the Matter of PMCM TV, LLC, Licensee of WJLP, Middletown Township, New Jersey v. Service Electric Cable TV of New Jersey Inc., d/b/a	)	CSR-8918-M Docket No. 16-26
In the Matter of PMCM TV, LLC, Licensee of WJLP, Middletown Township, New Jersey v. Time Warner Cable Inc.	)	CSR-8919-M Docket No. 16-27

Accepted / Filed
JUL - 6 2016
Federal Communications Commission
Office of the Secretary

DOCKET FILE COPY ORIGINAL

To: Marlene H. Dortch, Secretary
For transmission to: The Commission

CONSOLIDATED REPLY TO OPPOSITIONS TO APPLICATION FOR REVIEW

PMCM TV, LLC (PMCM, by its attorneys, hereby replies to the Oppositions filed by two of the consolidated respondents. Respondent RCN did not timely oppose the original Complaint and did not oppose this Application for Review, and the Complaint and Application for Review

No. of Copies rec'd 0+4
List ABCDE

as to RCN should therefore be deemed granted. No public interest purpose is served by denying a Complaint or Petition when the Respondent has chosen not to interpose an objection.

As will be set forth below, the Oppositions filed by Time-Warner Cable, Inc. ("Time Warner") and Service Electric Cable Television of New Jersey, Inc. ("Service Electric") dismiss or ignore the language of the statute and rely on unsupported and patently erroneous factual allegations.

I. Untimeliness Of Commission Action

PMCM noted in its Complaint, as well as in the Application for Review filed on August 25, 2014 that formally objected to the Bureau's indefinite suspension of the cable carriage right, that the Bureau has unlawfully subverted the timetable set by Congress for the resolution of cable carriage complaints. Section 614(d)(3) of the Act requires cable carriage disputes to be resolved in no more than 120 days. In its July 25, 2014 Order, the Bureau blithely shrugged aside the statutory timetable by quickly granting three cable companies the right not to carry PMCM's signal at all for about 11 months. PMCM strongly opposed the cable companies' request for indefinite extension of the carriage mandate, effectively "complaining" that the cable companies were asking to be allowed to evade the statutory mandate. Nothing in the statute gives the Commission the authority to grant itself an extension of time to retain a TV station in limbo. When the Bureau began its review of PMCM's Complaint in January of 2016, therefore, it was already in violation of the statutory command.

Moreover, since the statute demands a resolution of cable carriage issues by the Commission in no more than 120 days, this cannot mean that a delegated authority of the Commission needs to act on the matter within 120 days but the full Commission can then take however long it wants to review the matter. That interpretation of the statute thwarts the clear Congressional intent that

a final Commission action be reached quickly so that any necessary appeals can proceed immediately after the decision – whether by the station or the cable carriage company. Congress obviously considered these carriage issues to be of such paramount importance that it took the extraordinary step of setting a firm and highly accelerated timeline for decision. A decision by a delegated authority in 120 days simply leaves the issue in indefinite limbo. And since the Commission has yet to act on the several time-sensitive Applications for Review of Bureau actions that have been filed in this case to date, there is no expectation that prompt action will be forthcoming. The viewing options of some 22 million people in the country's largest market do not appear to rank high on the Commission's priority list.

We must also correct a "fact" cited by Service Electric at footnote 5 of its Opposition. It states there, erroneously and without any foundation whatsoever, that WJLP was dark between 2012 and 2014. This is false. The station operated in Ely, NV for virtually the entire time that PMCM owned the license, ceasing operations only when the New Jersey station was constructed and went on the air.

II. The Definition Of "Channel"

The opponents insist that the word "channel" in the Act has an ambiguous meaning and that Congress gave the same word contradictory meanings in the same section of the law. To these arguments we need only note the following:

1. PMCM does not insist, as Service Electric claims, that it be carried on frequency 60-66 MHz on the cable systems' plant. The statute does not require that. What it requires is that WJLP be carried on the same "channel number" on which it is broadcast over the air. See Section 614(b)(6).

2. The Commission's own rules assign TV stations a channel number associated with the frequency on which they transmit their signal through the air. Frequency 60-66 MHz is assigned Channel 3 in Section 76.603 of the rules. There is no reason to think that Congress ever considered that a channel number would be anything **but** the number assigned to its frequency, especially since PSIPs had not been invented in 1994. If Congress had wanted cable carriage to be based on a number arbitrarily assigned to a station by the Commission (as WJLP's PSIP was here), it would simply have said that. Instead, it tied the cable position to an objectively identifiable number – the channel number associated by the Table of Allotments with the specific radio frequency that propagates through the air.
3. Both opponents, like the Bureau, understandably ignore the fact that the Commission itself, in its 2001 Order discussing cable channel placement, repeatedly referred to a station's "over the air" channel as the channel associated with the frequency on which it broadcasts. *First Report and Order*, 16 FCC Rcd. 2598, 2633, footnote 238 (2001). These references by the Commission make perfect sense since a station's over the air channel had always been deemed to refer to its frequency channel and no one thought otherwise.
4. Service Electric derides PMCM's suggestion that the Commission, in 2008, simply added a cable carriage option to the four options set forth in the statute. Since the Commission expressly affirmed that the four statutory options remained "available" in the digital era but station "may" elect to be carried on their major PSIP channel, it is difficult to argue with this suggestion. Indeed, if the Commission had intended to reject its own repeated interpretations of what an over the air channel was and substitute an entirely new

meaning for "over the air" channel, it surely would have done so directly – not by a *sub silentio* and unexplained evisceration of a section of the statutory.

5. Service Electric also points to Section 614(b)(6) of the Act, which gives the Commission some latitude to change signal carriage requirements to ensure cable carriage of stations which have changed to conform to the modified "standards" for TV signals. That Section, entitled "signal quality", deals only with the technical standards applicable to TV transmissions. Nothing there gives the Commission carte blanch to ignore all other sections of the statute which were adopted at the same time. More importantly, in designing the PSIP allocation protocols, the ATS Committee offered no technical reasons why stations should be assigned a PSIP relating back to its original analog channel number. The only reason offered for this assignment criterion was that such assignments would permit stations to retain "brand" identification in the minds of viewers.[1] Neither the FCC nor anyone else has suggested that there is a technical reason why the PSIP number should or must be substituted for the over the air channel number in the digital era. In the parlance of the 614(b)(4), there is nothing about PSIPs that "necessitates" a change in the signal carriage requirements for cable systems due to changed TV transmission standards. Section (b)(4) is therefore no basis for the Bureau's dramatic rejection of the requirement of Section (b)(6).

III. The Bureau's Decision Conflicts With Section 614(h)(1(a)

The Opponents attempt to finesse the fact that the entire must-carry regime of the Act applies only to stations which are "licensed and operating on a channel regularly assigned to

[1] Brand identification is, of course, a matter best left to the trademark and copyright authorities – something the Commission wisely acknowledged when it removed itself from the branding issues associated with TV and radio call signs.

its community by the Commission that, with respect to a particular cable system, is within the same cable television market as the cable system." Neither Opponent disputes that this language unequivocally defines a must carry station by its channel as designated in the Table of Allotments. Neither they nor the Bureau explain how or why a station that is operating "over the air" on a PSIP channel which is not assigned to its community of license could qualify for must carry status. If the Bureau is correct – and quite obviously it is not since the entire must-carry regime would be undermined by the Bureau's interpretation – then the dire consequences predicted by PMCM must follow. Nor would it have made any sense for Congress to base its must-carry obligations on a channel designation associated with the community to which the station is assigned, yet in the same section of the Act use the word channel to refer to an arbitrary number not associated at all with the community of license.

IV. Violation Of The Spectrum Act

Again for obvious reasons, the Bureau and the Opponents attempt to wave aside the Spectrum Act's prohibition on changing a station's "channel" while the incentive auction process is proceeding. If a station's "over the air channel" is now defined by its major PSIP channel, as the Bureau has found here, then it follows with unassailable logic that the Commission is barred from changing that channel. Again, we emphasize that the Spectrum Act's prohibition attaches both to changes in spectrum usage rights (presumably changes in the frequency and the like) *and* to changes in "channel." WJLP operated on both over the air and major virtual channel 3 from 2009 until the Court lifted its stay of the FCC's channel change order in the spring of 2015. Since the Bureau has now declared WJLP's "channel" to be Channel 33, it is indisputable that the Bureau has changed WJLP's channel against its will in contravention of the Act. The

station suffers every day from this blatantly unlawful action, and the Commission must act quickly to correct it.

V. Service Electric Is Not Carrying WJLP At All

One issue involving Service Electric alone must be addressed. Section 614(a) of the Act flatly and unequivocally obligates cable systems to carry commercial television signals of stations within their market. This command is categorical, universal and brooks only a few exceptions not present here. What has been at issue in this case is only what particular channel number WJLP must be carried on by cable systems. No one has asserted, nor could they, that WJLP is not entitled to carriage at all. Yet Service Electric has been flagrantly violating the law since October of 2014 when WJLP went on the air. Service Electric had not even been granted a waiver, however unlawful, of the must carry obligation. It has simply violated a direct statutory command and the Bureau has done nothing to remediate that violation -- not a fine, not a sanction, not an admonition, not even a wagged finger. Who is enforcing the law here?

VI. Section 331 Contemplates Delivery Of A VHF Channel Identifiable As Such

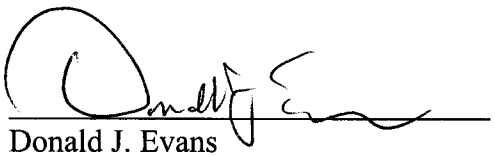
Service Electric suggests that the workings of Section 331 are not within the Commission's purview in this matter. To the contrary, Section 331 should have guided the Bureau's determination of WJLP's carriage position since that provision of the Act requires the Commission upon request to reallocate a commercial TV broadcast channel to a community in a State that has no such allocation. 47 U.S.C. Section 331. The purpose of the provision was plainly to make available to the people of New Jersey and other states a VHF channel as opposed to a UHF channel, of which there were several allotted to New Jersey when the law was enacted. VHF stations were viewed as far more desirable and it was determined that every state should have the benefit of at least one such channel. By divorcing WJLP from its fundamental identity

as a VHF channel, the Bureau's order defeats the purpose of Section 331. This, along with the assignment of an erroneous PSIP (which is the subject of another long pending application for review), effectively reduces the station to a virtual UHF channel in the public perception – the exact opposite of what the statute intended to accomplish.

VII. Conclusion

The Application for Review should be granted and the captioned cable systems should be ordered immediately to carry WJLP on cable channel 3 or some other mutually agreed channel consistent with their carriage of other broadcast stations on their systems. WJLP's channel should be declared to be "3" in order to eliminate the utter confusion of assigning it contradictory channel numbers for various statutory provisions – all of which have the purpose and effect of denying it the true status of a VHF station which Congress ordained.

Respectfully submitted,



Donald J. Evans

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street – 11th Floor
Arlington, Virginia 22209
(703) 812-0430
evans@fhhlaw.com
Counsel for PMCM TV, LLC

July 6, 2016

CERTIFICATE OF SERVICE

I, Michelle Brown Johnson, hereby certify that on this 6th day of July, 2016, I caused copies of the foregoing "Consolidated Reply to Oppositions to Application for Review" to be placed in the U.S. Postal Service, first class postage prepaid, or hand-delivered (as indicated below) addressed to the following persons:

Seth A. Davidson
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W., Suite 900
Washington, DC 20004
Counsel to Time Warner Cable

Joyce Bernstein (by hand)
Video Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Barbara Kreisman, Chief (by hand)
Video Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Jonathan Sallet, General Counsel (by hand)
Office of General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Chairman Thomas Wheeler (by hand)
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Mignon Clyburn (by hand)
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mace Rosenstein
Covington & Burling LLP
850 Tenth Street, NW, One City Center
Washington, DC 20001-4956
Counsel for ION Media License Co, LLC

Michael D. Basile
Cooley LLP
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Counsel for Meredith Corporation

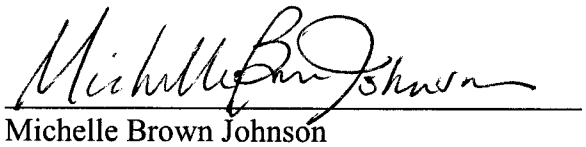
Commissioner Ajit Pai (by hand)
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Jessica Rosenworcel (by hand)
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Michael O'Rielly (by hand)
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mr. Thomas K. Steel, Jr.
RCN Telecom Services, LLC
650 College Road East, Suite 3100
Princeton, NJ 08540

James E. Dunstan
Mobius Legal Group, PLLC
P.O. Box 6104
Springfield, VA 22150
Counsel to Service Electric Cable TV of New Jersey Inc.



Michelle Brown Johnson