Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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In the Matter of the Application of )

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Amendment of Section 73.622(i), ) MB Docket No. 18-126

Digital Television Broadcast Stations ) RM-11800

(Bridgeport and Stamford, Connecticut) )

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**COMMENTS OF PMCM TV, LLC**

PMCM TV, LLC (“PMCM”) hereby offers these comments with respect to the captioned proposal to amend the Table of Allotments.[[1]](#footnote-1) PMCM is the licensee of full power television station WJLP in Middletown Township, NJ. As a licensee serving much of the same area that WEDW now proposes to serve, it will likely be economically affected by the proposed modification.[[2]](#footnote-2) As will be set forth more fully below, the proposed amendment (i) is inconsistent with the Commission’s freeze policy, (ii) will result in a loss of service to portions of Connecticut which now receive service from WEDW, (iii) effectively reallocates the station to New York, and (iv) raises broad issues regarding the Section 307(b) implications of the Commission’s DTS procedures that should be vetted more generally than just in the context of this single channel reallocation proposal.

1. **Inconsistency with the Commission’s Current Freeze**

The NPRM notes at footnote 5 that the Petitioner, Connecticut Public Broadcasting, Inc. (“CPBI”), requested a waiver of the freeze on filing petitions for digital channel substitutions. The NPRM then indicates that no waiver is necessary because the Media Bureau lifted the freeze on such petitions as long as no changes in the technical facilities of the station at issue were involved. It appears, however, that while at the time Petition was filed CPBI did not propose to change its technical facilities for station WEDW, it later proposed to relocate its facilities from the Bridgeport area to a site near Stamford, CT, the newly proposed community of license.[[3]](#footnote-3) That relocation application was subsequently granted by the Commission on December 1, 2017. Since the Notice Partially Lifting the Freeze on Channel Substitutions expressly *declined* to lift the freeze on petitions “to change the community of license which include changes in the authorized technical facilities,” the freeze applies to this application.[[4]](#footnote-4) The Bureau could not have intended for applicants to sidestep the freeze simply by filing for technical changes in the facilities *after* the petition to change communities had been filed. The Commission must therefore consider whether the high hurdle necessary for a waiver has been justified here. Clearly it has not since the requested change raises serious issues about the public interest benefit of permitting stations to relocate from their community of license closer to a much large community while abandoning large segments of their current audience.

1. **Loss of Service to Significant Parts of Connecticut**

The change in community of license coupled with the now authorized change in station location to a site closer to New York results in a loss of service by CPBI to substantial parts of central and southwestern Connecticut. The attached Engineering Exhibit depicts the differences in coverage between WEDW’s current operation from its Bridgeport site and the significantly reduced service to the central Connecticut New Haven-Hartford corridor as well as the loss of service to virtually all of Middlesex County. The number of households which would lose over the air service under the proposed change in community of license, coupled with the move to the new community, would be 537,714 households representing 2,612,775 people.

It is axiomatic that losses in service area are prima facie inconsistent with the public interest. *West Michigan Telecasters, Inc*. 22 FCC 2d 943 (1970). The Commission’s declaration at the time of the digital transition that it “is a priority of the Commission that all Americans continue to receive the television broadcast service that they are accustomed to receiving”[[5]](#footnote-5) is as true now for the post-Incentive Auction repacking process as it was in 2008. Thousands of residents of Connecticut should not be allowed to lose the service that has long been rendered to the central part of the state by WEDW. And while there is significant overlap of WEDW’s existing service contours from other stations CPBI holds in Connecticut, each station’s service must be judged on its own merits. CPBI did not make any showing at all regarding this substantial loss of service to its current viewing audience. The Commission therefore cannot even think of granting this petition under a normal 307(b) analysis. *Hall v. FCC*, 237 F. 2d 567 (DC Cir. 1956)

We observe that WEDW also filed a new DTS application fast upon the heels of the grant of its application to relocate its station from Bridgeport to Stamford.[[6]](#footnote-6) If granted, that application might restore service to the area previously served by WEDW at its Bridgeport location, but there is no certainty that that application will granted. (PMCM has lodged an informal objection against that application.) The Commission should and must evaluate this community change proposal in the light of the service that WEDW is currently authorized to serve from its Stamford transmitter site which will indisputably result in a loss of service to its audience. Under long-standing 307(b) principles, therefore, the petition must be denied.

1. **The Proposed Change in Community Would Effectively Reallocate the Station to New York**

CPBI’s instant proposal has a *deja vu* quality. Back in 2008, WSAH, the former call sign of WZME, which is now channel sharing with WEDW, proposed to relocate its Bridgeport station to the Empire State Building. The Commission at that time saw the proposed station relocation for what it was – “the effective reallocation of WSAH-DT to New York City and withdrawal of television service to over 2.2 million people.” *Letter to MTB-Bridgeport-NY Licensee LLC, November 5, 2009* at p. 4 (attached). The Bureau accordingly denied the proposed relocation.

The 2018 version of the 2008 proposal is only slightly prettied up by the expansion opportunities which seem to have been provided by the DTS rules. Under the combination of the putative move to Stamford and this accompanying change in WEDW’s community of license, CPBI and the licensee of WZME are now trying to accomplish precisely what the Commission previously prohibited. WEDW – all of whose facilities may now be shared by WZME – is proposing in the DTS application to broadcast from the Empire State Building over a large swath of New York and northern New Jersey, including the same portions of Westchester County, New York City, western Long Island, and a number of counties in New Jersey which the Bureau identified in its 2009 order as constituting an “effective reallocation” to New York. What is particularly troubling about the proposed relocation to New York is the fact that CPBI was chartered with the express mission of providing television service to the state of Connecticut. Yet the machinations presented here seem designed to enhance and expand service to residents of *New York City* and its environs – viewers who presumably have little interest in programming – particularly public affairs programming -- targeted at Connecticut. It certainly appears on its face that the tail of WZME is very much wagging the dog of CPBI to the detriment of the people of Connecticut.

What CPBI’s actual proposal is remains uncertain since it on the one hand is seeking the community of license change set forth in the instant proposal accompanied by a transmitter site relocation to Stamford (presumably so as to accomplish the assignment of the new reference point needed for the New York station to achieve optimal coverage), while on the other hand it appears to be abandoning any intention of actually implementing the transmitter site change to Stamford which has already been granted. The Stamford relocation application and the instant petition are obviously just artificial stepping stones necessary to achieve the real goal – serving New York City from a tall transmitter site. Stamford is nothing but a dummy site and a dummy community of license. The Commission should therefore deny this petition for the same reasons that it refused in 2009 to approve a de fact reallocation to New York City by the same station.

1. **The Process Proposed by CPBI Here Raises Issues that are Broader than this One Case**

The maneuver attempted by CPBI here, if approved, will almost certainly open the floodgates to a series of “me too” applications to use the DTS rules to effectively reallocate licenses. Since the original implementation of the Communications Act, the Commission has consistently striven to follow fair and well established principles designed to ensure that licenses are fairly, efficiently and equitably distributed across the United States. 47 U.S.C. § 307(b). The analytic process involves careful evaluation of the communities and populations to be served in relation to the stations that are available to serve them.[[7]](#footnote-7) The new DTS rules may, it appears, inadvertently undermine that historic process.

The DTS rules were designed to allow stations to “fill-in” holes in their authorized service areas.[[8]](#footnote-8) As an added benefit, the existence of different transmitting sites within the service area enables licensees to digitally target submarkets within the area. All of this is perfectly consistent with 307(b) principles. What we see here, however, is a gross distortion of those principles. Instead of serving its actual community of Bridgeport (or Stamford), CPBI is exploiting the ability to match the largest service area in its market to more than double its original service area, relocate its main transmitter to a much larger city in another state, and effectively abandon its original community while continuing to provide only minimal service there. Nothing in the DTS orders contemplated that authorizing fuller and more focused service to one’s existing local community-specific service area would lead to wholesale abandonment of that community. If CPBI is allowed to do what it is attempting here through a combination of community changes, transmitter site changes, and DTS configuration, the principles long respected and applied under Section 307(b) will fall by the wayside. The concept of local community service will wither away.

PMCM does not believe that is was ever intended by the Commission when it adopted the DTS rules. What is called for here is a broader examination of the deeper issues presented by CPBI’s proposal. PMCM therefore suggests that the Commission expand this proceeding, or open a new proceeding while holding this one in abeyance, to seek comment on the following issues:

Should DTS proposals be used to effectively reallocate licenses to larger communities?

Does the coupling of DTS authorizations with the right to match the coverage of the largest station in a market lead to de facto license reallocations?

Should a licensee be required to have an operating transmitter at its DTS reference point?

Are the purposes of §307(b) of the Act thwarted by overly broad DTS authorizations?

Should the Commission fundamentally revise its concept of “community of license” for 307(b) purposes by extending it to entire DMAs?

These and other issues are squarely raised by the CPBI rulemaking petition when coupled with its companion DTS application and its bogus relocation to Stamford. Before heading down a path that could fundamentally alter its decades-old policies governing distribution of licenses, the Commission, the Commission should hit the pause button, seek broad public comment, and determine, based on a full record, whether this is really the best policy for the nation.

Respectfully submitted,

PMCM TV, LLC

By: \_\_\_\_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Richard Morena

August 6, 2018

Certificate of Service

The foregoing Comment of PMCM TV, LLC was served by first class mail, postage prepaid, on

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1. The Notice of Proposed Rulemaking was published in the Federal Register on July 6, 2018, FR Vol. 83, No. 130 at p.31516. [↑](#footnote-ref-1)
2. *See F.C.C. v. Sanders Bros. Radio Station*, 309 U.S. 470, 476-77 (1940). [↑](#footnote-ref-2)
3. See File No. 0000034869, granted December 1, 2017. [↑](#footnote-ref-3)
4. *Media Bureau Partially Lifts the Freeze on the Filing of Petitions for Rulemaking to Change Full Power Television Stations’ Communities of License*, DA 18-40, re. January 12, 2018. [↑](#footnote-ref-4)
5. Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations, 23 FCC Rcd 18534, 18535 (2008). [↑](#footnote-ref-5)
6. File No. File No. 0000036047 [↑](#footnote-ref-6)
7. *See, e.g.*, *FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358 (1955); *Beaufort County Broadcasting Co. v. FCC*, 787 F.2d 645 (D.C. Cir. 1986). [↑](#footnote-ref-7)
8. *See In re Digital Television Distributed Transmission System Technologies*, Report and Order, 23 FCC Rcd. 16731, FCC 08-256 (rel. Nov. 7, 2008). [↑](#footnote-ref-8)