

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

In the Matters of)	
)	
Request for Declaratory Ruling by)	MB Docket No. 14-150
Meredith Corporation and Alternative PSIP)	
Proposal by PMCM TV, LLC, for)	CSR-8917-M
Station WJLP(TV) (formerly KVVN(TV)),)	Docket No. 16-25
Middletown Township, New Jersey)	
FCC Facility ID No. 86537)	CSR-8918-M
)	Docket No. 16-26
<i>et al.</i>)	
)	CSR-8919-M
)	Docket No. 16-27

To: Marlene H. Dortch, Secretary

**OPPOSITION TO
PMCM TV, LLC’S EMERGENCY MOTION FOR STAY**

ION Media License Company, LLC (“ION”), licensee of WPXN-TV, New York, New York (“WPXN”); Meredith Corporation (“Meredith”), the licensee of WFSB(TV), Hartford, Connecticut; and CBS Broadcasting Inc. (“CBS”), the licensee of KYW-TV, Philadelphia, Pennsylvania (“KYW”), respectfully submit this Opposition to the “Emergency Motion for Stay” filed on September 20, 2017 (the “Motion”), by PMCM TV, LLC (“PMCM”).¹

PMCM seeks to stay the effectiveness of the Commission’s two recent decisions in the linked captioned matters.² Those unanimous decisions by the full Commission affirmed,

¹ An electronic copy of PMCM’s Motion, which requests that the Commission act by “no later than noon on September 22,” Motion at 1, was delivered to undersigned counsel by e-mail at 1:39 p.m. on September 20, 2017. This Opposition is timely filed. 47 C.F.R. § 1.45(d).

² See *PMCM TV, LLC, Licensee of WJLP, Middletown Township, New Jersey, et al.*, Memorandum Opinion and Order, FCC 17-117 (rel. Sept. 15, 2017) (the “*Cable Carriage Decision*”), and the companion *Request for Declaratory Ruling by Meredith Corporation and “Alternative PSIP Proposal” by PMCM TV, LLC for WJLP (Formerly KVVN(TV)), Middletown* (continued...)

in turn, multiple decisions issued over a period of years by the Media Bureau (collectively, the “Bureau Decisions”) that assigned PMCM’s television station WJLP, RF channel 3, Middletown Township, New Jersey, to major channel 33 with respect both to its over-the-air station identification under the PSIP protocol and for purposes of placement on cable systems pursuant to its must-carry election.³

PMCM’s contention that a stay is mandated because the implementation of the Commission Decisions will result in irreparable harm to PMCM is sheer sophistry. The Commission Decisions that are the subject of the Motion affirmed Media Bureau decisions pursuant to which WJLP has been viewable as channel 33 on over-the-air television receivers for more than three years, and carried on channel 33 by major cable systems for more than two years. Indeed, PMCM has it exactly backwards: a stay – and the relocation of WJLP from major channel 33 to major channel 3 – actually would *overturn* the *status quo*, resulting in irreparable harm to ION, CBS, Meredith and other parties to the proceedings, while sowing viewer confusion and imposing costs on consumers.

PMCM has asserted repeatedly for years, based on its misapprehension of the law and the Commission’s rules and precedent, that WJLP has an entitlement to major channel number 3. Just as often the Bureau, and now the Commission, have fully and fairly rejected its assertions. PMCM is free to seek reconsideration or review of the Commission Decisions in the ordinary course. But it has not come close to making out any “exigency” -- and indeed, its

Township, New Jersey, Memorandum Opinion and Order, FCC 17-118 (rel. Sept. 15, 2017) (the *Channel Assignment Decision*,” and, together with the *Cable Carriage Decision*, the “Commission Decisions”).

³ The procedural history of these protracted proceedings, including PMCM’s multiple interlocutory appeals to the Commission and the U.S. Court of Appeals for the District of Columbia Circuit, is set out at length in the Commission Orders. Given the shortness of time we will not rehearse it here.

Motion is a rehash of the very same arguments that have been rejected repeatedly the Commission and the court of appeals -- warranting the extraordinary relief of a stay.⁴ The Motion therefore should be dismissed or denied.

PMCM is unlikely to prevail on the merits. The Commission Decisions, like the Bureau Decisions it affirmed, painstakingly analyzed and appropriately rejected PMCM's "Alternative PSIP Proposal" and concluded that assignment of WJLP, a newly-activated station in the New York DMA, to major channel 33 is consistent with Commission rules and precedent. Similarly, the Commission thoroughly considered PMCM's arguments regarding Section 1452(g)(1)(A) of Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (also known as the Spectrum Act) in concluding that the Spectrum Act protects stations' *RF* channels, rather than their *virtual* channels, the subject of these proceedings.⁵

As the record demonstrates, PMCM is wrong about Commission precedent, wrong about the PSIP Standard, wrong about the Commission's authority to assign WJLP virtual channel 33, and wrong about the Spectrum Act. Indeed, two years ago the D.C. Circuit, in rejecting PMCM's demand that it "compel[] the Commission to order that [WJLP] be carried on Channel 3 on all cable systems as to which [PMCM] has elected must-carry status," concluded that PMCM had "not demonstrated a clear and indisputable right to such relief."⁶

PMCM has not suffered and will not suffer irreparable harm as a result of the Commission Decisions. As noted above, WJLP has been viewable over the air and carried on major cable systems on channel 3 for years pursuant to the Bureau decisions affirmed by the

⁴ See Motion at 2.

⁵ See *Channel Assignment Decision* at pars. 23-43.

⁶ See *In re PMCM TV, LLC*, No. 15-1058 (D.C. Cir. Sept. 23, 2015) (per curiam).

Commission here. PMCM therefore cannot show that denial of a stay would cause it to suffer irreparable -- or *any* -- harm. Indeed, the Media Bureau, in one of the decisions affirmed by the Commission here, previously concluded that PMCM was not entitled to a stay of the effectiveness of its assignment to major channel 33.⁷ Nothing has changed that would warrant the relief PMCM is seeking again here.

Grant of a Stay Will Substantially Harm Incumbent Stations and Their Viewers.

The requested stay would harm ION's WPXN, Meredith's WFSB and CBS's KYW, and disrupt their historical relationships with viewers. As the Commission determined, each of the CBS, ION and Meredith stations has built its channel 3 identity and brand equity over decades of local broadcasting.⁸ A stay that allows WJLP to use major channel number 3 would harm the identity and brand established by each of these licensees.

A stay also would substantially harm viewers, who, as the Bureau and the Commission have found, would be confused by the introduction of a new station using major channel 3.⁹ Consumers in the Tri-State area have become accustomed to finding the programming of the incumbent stations on channel 3. WFSB has been identified as channel 3 in the WJLP overlap area for almost 50 years. KYW has been identified as channel 3 in Philadelphia and parts of New Jersey for more than 75 years. WPXN has been carried by certain Cablevision cable systems in New York on channel 3 for nearly fifteen years. PMCM has

⁷ See *Request for Declaratory Ruling by Meredith Corporation and "Alternative PSIP Proposal" by PMCM TV, LLC for WJLP (Formerly KVVV(TV)), Middletown Township, New Jersey*, Declaratory Ruling, MB Docket No. 14-150 (MB rel. June 5, 2015) (dismissing PMCM's "Emergency Motion for Stay of Suspension of Service and Virtual Channel Re-Assignment").

⁸ See *Cable Carriage Decision* at pars. 13-17.

⁹ *Id.*

presented no reason why a newly-activated station should be allowed to upend those longstanding relationships.

A Stay Would Harm the Public Interest. Public interest considerations including historic viewing patterns, settled business expectations, and brand equity compel a denial of a stay which, as discussed above, would cause viewer confusion and disrupt the longstanding relationships of several incumbent local stations with their communities. Viewers should be able to find incumbent stations where they have historically found them, without confusing duplication in over-the-air channel positioning and disruption to existing cable channel lineups. The public interest also requires honoring established business arrangements, such as ION's carriage on the Cablevision systems.¹⁰

¹⁰ Nor would the public interest be served by granting a stay request to a licensee that has shown its willingness to defy FCC requirements. On October 23, 2014, the Media Bureau assigned WJLP virtual channel 33 on an interim basis. Yet more than ten days later, WJLP continued to use major channel 3, in violation of the Media Bureau's requirements and the PSIP Standard incorporated into the Commission's rules. The Bureau ultimately had to suspend program test authority for this unexcused failure to comply. *See Channel Assignment Decision* at par. 9. *Cf.* Motion at 2 (acknowledging that WJLP began using major channel number 3.10 "[w]hile this matter was pending"). PMCM's assertion that "no actual viewer out of twenty-two million people in the service area was harmed or confused in any way" by WJLP's unlawful operation (*id.*) is unsupported and irrelevant.

CONCLUSION

For the foregoing reasons, PMCM's Motion should be dismissed or denied.

Respectfully submitted,

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September 22, 2017

CERTIFICATE OF SERVICE

I, Chelsea Deeder, certify that on this 22nd day of September, 2017, I served copies of the foregoing "Opposition to PMCM TV, LLC's Emergency Motion for Stay" by causing them to be delivered by first class U.S. mail or e-mail, or as otherwise indicated, to the following:

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