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October 7, 2014

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Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St. SW  
Washington, DC 20045

Re: PMCM TV, LLC Program Test Notification

Dear Ms. Dortch:

This letter will respond to the request filed jointly by CBS Broadcasting, Inc., Meredith Corporation and ION Media License Company, LLC that PMCM TV, LLC be required to operate Station WJLP<sup>1</sup> using major channel 33 rather than major channel 3, which is its currently specified virtual channel as shown in the CDBS data base.

Initially, we note that ION has no standing whatsoever to complain about WJLP's PSIP. ION shares neither an over the air channel nor a PSIP with WJLP. Since the Media Bureau has allowed certain cable systems to defer carrying WJLP's signal, PMCM's over the air operation can have no conceivable adverse effect on ION whatsoever. It appears that ION is simply trying to delay the entry of a competitor into the New York market without even a colorable claim to some sort of technical harm. The FCC should dismiss ION's request summarily.

Meredith and CBS assert that PMCM is "defying" the Commission's rules by going on the air using its authorized over the air channel and the virtual, or PSIP, channel dictated by ATSC A/65. Nothing could be further from the truth. PMCM has acted in complete consistency with the rules and ATSC A/65:

<sup>1</sup> As of October 3, KVVV's call sign was changed to WJLP.

Marlene H. Dortch, Secretary  
Federal Communications Commission  
October 7, 2014  
Page 2

- a) No FCC action is required to set a station's PSIP major channel number, nor is the PSIP major or minor channel reflected in any license, construction permit, or other authorization. Rather, identification of a station's PSIP channel occurs automatically according to the provisions of ATSC A/65, without incident. Indeed, several thousand stations have converted to digital operation and are currently utilizing PSIPs, but FCC intervention with regard to any PSIP matters has arisen in only a very small handful of cases.
- b) In his July 25, 2014 letter permitting three cable systems an indefinite delay in carriage of PMCM's signal, William Lake expressly stated that "Section 73.682(d) requires digital television broadcast television to comply with ATSC A/65C ("PSIP Standard").<sup>2</sup> The PSIP Standard is meant to "guarantee that the *two-part* channel number combinations used by a broadcaster will be different from those used by any other broadcaster with an overlapping DTV service area."<sup>3</sup> DA14-1029 at p.3. That is why PMCM has adopted a major/minor channel number combination that is *different* from Meredith's 3.1 channel number, thus complying with the "guarantee" cited by Mr. Lake and by the PSIP allocation protocols. It is impossible to see how strict compliance with Mr. Lake's directive can be interpreted as somehow defying the Commission's rules.
- c) As Mr. Lake indicated, ATSC A/65 established the principles that govern PSIP use. Under ATSC A/65 Annex B at paragraph B1.1.1), WJLP's major channel PSIP was determined by its NTSC RF channel number. Channel 3 is therefore correctly set in the Commission's database as its major channel 3. To avoid the circumstance of overlapping identical two-part channel combos, PMCM selected a minor channel sufficiently distant from Meredith's 3.1 operation to ensure no overlap of identical PSIPs. Paragraph B1.1 5) of Annex B expressly acknowledges, with approval, that stations using the same major\_channel number may have overlapping signals – including stations that are *not* commonly owned. In fact, as PMCM has elsewhere pointed out, there are currently more than 100 situations in which non-commonly owned stations with overlapping signals use the same major\_channel number. Indeed, in those situations the stations apparently also use the same minor\_channel numbers, which (unlike PMCM's PSIP) is flatly contrary to the express language of ATSC A/65. The correct – indeed the only – application of the ATSC PSIP process is to adopt a minor channel that is different from the other overlapping major channel licensee to ensure that there is "no duplication of the *two-part* channel number in the DTV Service Areas." PMCM has again complied scrupulously with the Commission's rules.

<sup>2</sup> 47 C.F.R. § 73.682(d) (incorporated by reference, *see* § 73.8000).

<sup>3</sup> In his letter, Mr. Lake cited "PSIP Standard, Annex B at 1.8" for this proposition. There is no Paragraph 1.8 in Annex B. However, the language quoted by Mr. Lake does appear in ATSC A/65 Annex B.1.1.

Marlene H. Dortch, Secretary  
Federal Communications Commission  
October 7, 2014  
Page 3

- d) Meredith and CBS suggest that WJLP should be assigned a PSIP of major channel 33. There is no basis whatsoever for such an assignment. That suggestion is presumably derived, incorrectly, from Paragraph 4) of ATSC A/65 Annex B. But Paragraph 4), by its own terms, expressly involves the allotment of a new DTV channel to a “market” where that channel had previously been assigned for NTSC operation. In this case, WLJP’s Channel 3 has been allotted to Middletown Township, New Jersey, in the New York market. Channel 3 was not previously allotted to that market. Moreover, Channel 33 (*i.e.*, WFSB’s RF channel) is allotted to the separate and distinct Hartford/New Haven market, *not* the New York market. Here the ATSC standards look explicitly to the market of *allotment* rather than areas where there may be overlapping signals to determine whether Paragraph 4) applies. The Commission uses the Nielsen-defined TV markets to define what a TV market is for all purposes under the Commission’s television and cable TV rules. See, for example, *Gunter Marksteiner v. Comcast Corp. and Comcast Cable of FLA/GA LLC*, 23 FCC Rcd 8320 (2008).<sup>4</sup> In addition, WJLP (formerly KVVN) has been an authorized station since long before the June, 2009 DTV transition; it is not a “newly-licensed” station. Accordingly, assignment of PSIP 33 to WJLP would be inconsistent with not only Paragraph 1) but also paragraph 4).
- e) Meredith and CBS allude vaguely to some “harm” that has been caused by PMCM’s use of PSIP 3.10. Tellingly, they demonstrate no actual adverse economic or technical effect on either them or any member of the public resulting from PMCM’s operations. PMCM has received not a single complaint from any viewer in its 20 million+ person service area about “confusion.” In the event that a viewer receives two major channel 3 over-the-air signals, he or she need only do what viewers have done in the more than 100 other markets where this situation has arisen: re-scan the stations on his or her TV set. Since WFSB has virtually no over the air signal reception in the areas where its PSIP overlaps with WJLP’s (thanks to RF interference from CBS’s WCBS-TV, which transmits on RF Channel 33 – the same as WFSB’s – but which is dramatically short-spaced to WFSB), it is not surprising that few, if any, viewers have had to undertake even that minor one-time effort.
- f) While PMCM opposed the Bureau’s decision to open a Docket on this matter, perhaps the hopefully minor delay arising from that unnecessary process will assist in deciding the PSIP issue once and for all. It will permit the Commission to confirm the absence of adverse real world effects occasioned by overlapping non-identical two-part channel numbers. It will also permit the Commission to consider the more than 100 situations across the country where two or more stations with overlapping service areas already use (and have used for years) identical two-part PSIP numbers, notwithstanding the contrary

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<sup>4</sup> “Section 76.55(e)(2) of the Commission’s rules specifies that a commercial broadcast television station’s market is its Designated Market Area as determined by Nielsen Media Research. 47 CFR §76.55(e)(2).”

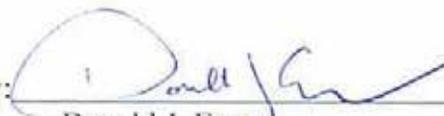
Marlene H. Dortch, Secretary  
Federal Communications Commission  
October 7, 2014  
Page 4

dictate of ATSC A/65. To the best of PMCM's knowledge, none of these situations has given rise to any noticeable problem. The Commission might also use the opportunity afforded by the docketing schedule to get corroboration from the ATSC authors that the differentiated minor channel approach adopted by PMCM here is fully consistent with the letter and intent of Annex B. If, after evaluating that data, the Commission decides to overrule the current ATSC protocols so as to eliminate the possibility of even non-identical major/minor channel overlaps, it would have to initiate a rulemaking to modify Section 73.682(d). But it would do so knowing that the exact disruption which the Commission seems to be concerned about here would be caused in literally scores of markets with no apparent benefit to anyone. There is no rational, non-arbitrary, non-capricious basis on which the Commission could or should single out WJLP for differing treatment from the hundred other stations that have overlapping major channel PSIPs.

The filings in MB Docket 14-150 will presumably guide the Commission's decision as to whether a PSIP change is legally or factually warranted. To grant the Meredith-CBS-ION request now, particularly in the absence of any showing of any harm to anyone whatsoever, would in effect prejudice the outcome of the Docket without the full record that the staff presumably wants. It would also disrupt the viewers who may have already re-scanned their sets to pick up a new programming source. PMCM therefore urges the Commission to deny the request of Meredith, CBS and ION and focus instead on determining whether this entire matter is a search for a solution for which there is no problem.

Respectfully submitted,

PMCM TV, LLC

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