

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re)
)
WJLP (formerly KVNV(TV)),)
MIDDLETOWN TOWNSHIP, NEW)
JERSEY)
)
FCC Facility ID No 86537,)
)
Request for Declaratory Ruling by Meredith) MB Docket No. 14-150
Corporation,)
)
and)
)
“Alternative PSIP Proposal” by PMCM TV,)
LLC)

To: Marlene Dortch, Secretary

For Transmission to: The Media Bureau

**REPLY COMMENTS OF
MEREDITH CORPORATION AND CBS BROADCASTING INC. ON
“ALTERNATIVE PSIP PROPOSAL” OF PMCM TV, LLC AND
REQUEST OF MEREDITH CORPORATION FOR
DECLARATORY RULING**

Meredith Corporation (“*Meredith*”) and CBS Broadcasting Inc. (“*CBS*”), by their attorneys, hereby submit their reply comments on the “Alternative PSIP Proposal” of PMCM TV, LLC (“*PMCM*”), licensee of WJLP(TV) (formerly KVNV(TV)), Middletown Township, New Jersey (“*WJLP*”), and the related Request of Meredith Corporation for Declaratory Ruling in response to the Media Bureau’s *Public Notice*, DA 14-1298, released September 12, 2014.

Aside from PMCM’s own comments, PMCM’s “Alternative PSIP Proposal” received no supporting comments from anyone that its proposal would directly affect—not from viewers, not from other broadcast stations in the market, and not from cable systems or other programming

entities. Apart from PMCM's own submission, the only filing not actively opposing PMCM's Alternative PSIP Proposal was a letter from Paul S. Rotella, Esq., President and CEO of the New Jersey Broadcasters Association, of which PMCM is a member.¹

In contrast, commenters did provide strong support for the grant of Meredith's Request for Declaratory Ruling. In its Request, Meredith asked that the Commission affirmatively declare that WJLP (then KVVV(TV)) must operate using virtual channel 33 under the PSIP Standard² incorporated in the Commission's rules, given that WJLP's interference-free service contour overlaps that of Meredith's WFSB, an incumbent station in the market already using virtual channel 3 and identified with channel 3 for almost half a century. CBS's KYW-TV, Philadelphia, Pennsylvania, similarly has overlapping interference-free service contours with WJLP to the south, also uses virtual channel 3, and has an even longer identification with channel 3 in its overlap area with WJLP than does Meredith's WFSB, and has joined in Meredith's request for the declaratory ruling.

Comments filed by ION Media License Company, LLC ("*ION*") and by Turner Broadcasting System, Inc. ("*Turner*") each support with detailed explanation the plain-language interpretation of the PSIP Standard advanced by CBS and Meredith and uniformly reflected in prior Commission precedent that assigns virtual channel 33 to PMCM's WJLP, because WJLP is

¹ In his letter, Mr. Rotella, while indicating general support for PMCM's Alternative PSIP Proposal, focuses principally on the Bureau's interim order temporarily suspending cable carriage obligations for PMCM pending resolution of this proceeding.

² "ATSC Standard: Program Information Protocol for Terrestrial Broadcast and Cable (PSIP)," Advanced Television Systems Committee, Doc. A/65:2013, Rev. Aug. 7, 2013 ("*ATSC A/65B*"), at 91 ("*PSIP Standard*"). Section 73.682(d) of the Commission's rules incorporates this requirement into the Commission's rules for full-power stations. See 47 C.F.R. §73.682(d).

a station “newly licensed” in the market.³ ION points out that PMCM’s contrary contention that WJLP nevertheless has “an unqualified right to demand cable carriage on its over-the-air channel”—by which PMCM means its RF channel, channel 3—contradicts established Commission rules and precedent, would undermine the Commission’s policy goals in adopting the PSIP Standard, and would disserve the public interest by upsetting historical viewing patterns, disrupting established business relationships, and causing viewer confusion.⁴ Following the DTV transition, as ION points out, a television broadcast station’s “over-the-air channel number” is the channel number identified by reference to the station’s major channel number as carried in its PSIP and, for WJLP, that virtual channel number must be channel 33, unless the Commission grants a waiver for “unusual circumstances.”⁵ At the least, as ION points out, the Bureau should not assign WJLP channel 3 as its major channel number “to effectuate the clear purpose of the [PSIP Standard] to avoid confusing PSIP overlaps.”⁶

Indeed, all commenters other than PMCM and its membership organization focused on the absence of any policy justification to ignore the plain language of the PSIP Standard to preserve for WJLP the same virtual channel it used when licensed to Ely, Nevada, more than a thousand miles away. PMCM has the policy precisely backwards: the PSIP Standard is intended to prevent a station newly licensed in a market from using the same major channel as an

³ See Turner Comments at 2-3 and ION Comments at 6-8; see also *Seaford, Delaware*, Report and Order, 25 FCC Red 4466, 4472 (Vid. Div. 2010) (“*Seaford, Delaware*”), petition for reconsideration denied, Memorandum Opinion and Order on Reconsideration, 28 FCC Red 1167 (Vid. Div. 2013); petition for further reconsideration denied, Memorandum Opinion and Order on Further Reconsideration, MB Docket No. 09-230, DA 14-546 (May 1, 2014).

⁴ See ION Comments at 1-5.

⁵ See ION Comments at 2 and the decisions cited therein (citations omitted).

⁶ ION Comments at 7.

incumbent station with overlapping service contours so as to avoid viewer confusion and to preserve incumbent stations' investment in and identification with those channels that they, like WFSB and KYW-TV, may have been using for decades.⁷

PMCM's objections to assigning WJLP virtual channel 33 under the Meredith-CBS plain language reading of the PSIP Standard do not withstand analysis. For example, PMCM asserts that the obviously relevant provisions of the PSIP Standard cannot apply to WJLP because a prerequisite is the existence of "an RF channel previously allotted for NTSC in a market" that is "assigned to a newly-licensed DTV licensee in that market." PMCM seeks to inject ambiguity where none exists by insisting that "market" must mean "DMA" and that the phrase "newly-licensed DTV licensee in that market" does not include the words "in that market."⁸ There is no indication that the drafters of the ATSC A/65 standards that the Commission adopted as its PSIP Standard used "market" as a technical reference to the DMA market definition. Moreover, although the Commission formerly licensed WJLP (as KVVN) to serve Ely, Nevada, WJLP is now being licensed to serve Middletown Township, New Jersey and is therefore a "newly licensed station in that market," consistent with the letter and policy of the PSIP Standard that assigns WJLP to virtual channel 33.

The PSIP Standard specifies a protocol to avoid duplication in the assignment of virtual channels to stations that come into a market where an incumbent station previously had its

⁷ See Comments of Meredith and CBS at 5-6.

⁸ The text of the relevant section reads as follow:

If, after February 17, 2009, an RF channel previously allotted for NTSC in a market is assigned to a newly-licensed DTV licensee in that market, the newly-licensed DTV licensee shall use, as its major channel number, the number of the DTV RF channel originally assigned to the previous NTSC licensee of the assigned channel.

PSIP Standard, *supra*.

present virtual channel as its RF channel in prior NTSC operations. WJLP competes for over-the-air viewers in the area defined by its service contours. Treating WFSB and KYW-TV as being in the same “market” with WJLP because each has overlapping service contours with WJLP accords seamlessly with the PSIP Standard and prior Commission precedent.

Channel 3—the channel allotted to each of WFSB and KYW-TV for prior use in that market as its NTSC channel and subsequently for use as each station’s virtual channel—is thus “an RF channel previously allotted for NTSC” in that market. This reading accords with the stated purpose of the PSIP Standard to identify licensees’ virtual channel assignments while avoiding potential conflicts in major channel assignments with incumbent stations that provide over-the-air service to the same area. WJLP’s reading of “market” to mean only DMA, in contrast, implies that the Commission is indifferent to whether its assignment of a particular virtual channel to a licensee would cause viewer confusion within the service area of a station in a neighboring DMA despite substantial service area overlap, a position that is not reflected in the PSIP Standard and that, if adopted by the Commission, would reverse existing Commission precedent and nullify, among other things, the Commission’s recent decision in *Seaford, Delaware*.⁹

One point PMCM gets exactly right: With the incorporation of the PSIP Standard into the Commission’s rules, the Commission sought to avoid the need for direct involvement in the

⁹ See *Seaford, Delaware, supra*. Although the language and stated purposes of the PSIP Standard fully support the definition of “market” for the reasons explained above, PMCM’s notion that the Commission lacks authority to interpret the PSIP Standard that it incorporated into its rules because someone else originally wrote it is insupportable. The Commission always retains the authority to interpret its rules, whether the Commission drafted the language itself or incorporated into its rules a standard compiled by a third party or advisory body. Consider, for example, the Commission’s adoption of BIA-Arbitron radio market definitions for purposes of its local radio ownership rules. In applying those standards, the Commission declines, for purposes of allowing additional local ownership, to apply BIA-Arbitron market reassignments for a period of two years after BIA-Arbitron say that the reassignment occurred.

designation of virtual channels to new entrants and to limit its role to adjudicating conflicts. PMCM fails, however, to acknowledge the necessary implication of this goal—namely, that the Commission should interpret the PSIP Standard so that, to the maximum extent practicable, application of the standard will reliably identify one and only one virtual channel number that meets the standard in any particular context.

PMCM invites the Commission to interpret the PSIP Standard as providing a menu of available combinations of major and minor virtual channels from which a television station newly licensed in a market may select at will, with the menu including major channels that conflict with those of stations having overlapping service contours choices that would require the modification of the virtual channel assignment of incumbent broadcasters in the market (as, for example, by restricting incumbents from using a particular range of minor channels, as PMCM’s “Alternative PSIP Proposal” would do). If the Commission accepts that invitation, it continually will face proceedings in which parties argue about which of the multiple channel choices presented would best serve the public interest and do the least harm to incumbent users of the channel and other affected entities. In contrast, Meredith’s and CBS’s interpretation of the PSIP Standard, with which every commenting party except PMCM and its membership organization concurs, gives full credit to the language of the PSIP Standard and produces a single acceptable channel for WJLP’s virtual channel, channel 33.¹⁰

The Commission previously has granted waivers for virtual channel assignments inconsistent with the PSIP Standard in “unusual circumstances” if an alternate channel assignment would better serve the Commission’s underlying goals in adopting the PSIP

¹⁰ The former RF channel of KYW-TV already is in use in the market.

Standard.¹¹ PMCM's case for its Alternative PSIP Proposal, however, assumes at the outset that PMCM is entitled to virtual channel 3 and all included minor channels under the PSIP Standard as a matter of right and, against that background, PMCM argues that having WJLP use only channels 3.10 *et seq.* would offer advantages.¹² If, however, as Meredith and CBS have demonstrated, the PSIP Standard identifies channel 33 as the virtual channel for WJLP, then PMCM has failed to demonstrate any "unique circumstances" sufficient to warrant substituting virtual channel 33 with the range of minor channels 3.10 *et seq.* as WJLP's virtual channel. By using virtual channel 3.10 *et seq.* and identifying its station as "Channel 3" in the areas of service overlap with WFSB and KYW-TV, PMCM would create viewer confusion and diminish the identification of these long-serving stations with Channel 3 in the service overlap areas with WJLP.

The Commission has been generous in granting waivers of the PSIP Standard to avoid viewer confusion, but has denied waiver requests that would create service area overlaps in which two licensees use the same major channel. In its recent decision granting waivers to KJCT(TV) and KKHD-LP, Grand Junction, Colorado,¹³ for example, the Commission found "unique circumstances" because the requested waiver would "avoid viewer confusion when

¹¹ See, e.g., Letter decision dated October 21, 2014, from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau, to Excalibur Grant Junction, LLC and Gray Television Licensee, LLC regarding KJCT(TV) and KKHD(LP), Grand Junction, Colorado ("*KJCT/KKHD Decision*").

¹² PMCM petitions for imposition of its 3.10 *et seq.* solution "irrespective of, but obviously subject to, any subsequent reconsideration or review that might be sought." *Id.* at 12. This formulation as presented, notably, would not foreclose PMCM itself from seeking further review or appeal to vindicate its claims to use virtual channel 3 without regard to the service overlap areas with WFSB and KYW-TV.

¹³ *KJCT/KKHD Decision, supra.*

KJCT(TV)'s programming is transferred to KKHD-LP.”¹⁴ The Bureau stated that the proposed operation was “technically feasible as the stations’ protected service contours will not overlap with the protected service contours of other stations on those major channel numbers,” a reference to virtual channel 20 and virtual channel 8. Under the *KJCT/KKHD Decision*, PMCM’s proposal, which would create two new, heavily populated areas in which two stations would use the same major channel number, is therefore not “technically feasible” under Commission precedent and should be rejected.¹⁵

In sum, except for PMCM, no party directly affected by PMCM’s Alternative PSIP Proposal supports it, so adoption of the proposal will not resolve this proceeding. The PSIP Standard does not provide for the assignment of channels 3.10 *et seq.* to WJLP as a matter of right, so imposition of the PSIP Standard would require the grant of a waiver. PMCM has not met the high hurdle for obtaining a waiver. Furthermore, because the PMCM Alternative PSIP Proposal is both inconsistent with the language of the PSIP Standard and undercuts its policy goals, it is apparent that PMCM cannot meet that standard. Accordingly, for the reasons stated above and in the initial comments of Meredith and CBS, the Commission should assign WJLP to

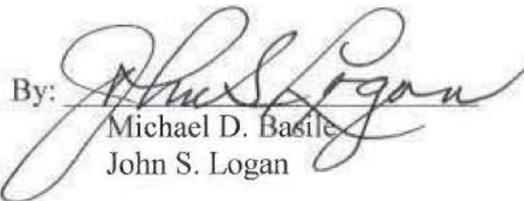
¹⁴ *Id.* at 2.

¹⁵ *Id.* at 3. Meredith and CBS addressed the high standards for seeking a waiver of the Commission’s rules in their initial comments in this proceeding.

virtual channel 33 as its virtual channel by application of the PSIP Standard and terminate this proceeding.

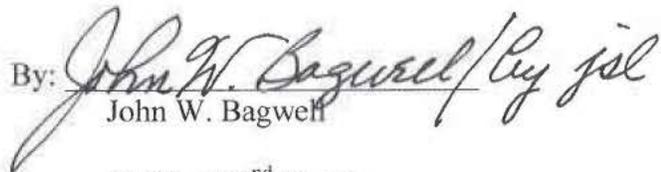
Respectfully submitted,

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October 29, 2014

CERTIFICATE OF SERVICE

I, Rayya Khalaf, a secretary at the law firm of Cooley LLP, do hereby certify that a true and correct copy of the foregoing “Reply Comments of Meredith Corporation and CBS Broadcasting Inc. on ‘Alternative PSIP Proposal’ of PMCM TV, LLC, and Request of Meredith Corporation for Declaratory Ruling” was served by first-class U.S. mail, postage-prepaid, unless otherwise indicated, on the 29th day of October, 2014, on the following:

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