

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

In re)
)
Program and System Information)
Protocol (PSIP) Designation for)
Station WJLP(TV) (formerly KVNV(TV)),)
Middletown Township, New Jersey)
FCC Facility ID No. 86537)

MM Docket No. 14-150

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Federal Communications Commission
Office of the Secretary

TO: Marlene H. Dortch, Secretary

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For transmission to: The Commission

**EMERGENCY MOTION FOR STAY OF SUSPENSION OF SERVICE AND
VIRTUAL CHANNEL RE-ASSIGNMENT**

PMCM TV, LLC ("PMCM"), by its counsel, hereby moves the Commission to immediately stay the effectiveness of the November 7, 2014 Letter (copy attached) issued by the Deputy Chief of the Media Bureau's Video Division pending the Commission's review and resolution of an Application for Review filed simultaneously herewith of that Order and the Video Services Division's companion letter of October 23, 2014 (DA 14-1528) (*Temporary PSIP Assignment*). The *Temporary PSIP Assignment* purported to assign Station WJLP a virtual channel different from the two-part channel on which WJLP currently operates and the PSIP it was assigned by operation of the normal PSIP protocols. As will be set forth below, the Bureau's *Temporary PSIP Assignment* and the subsequent suspension of WJLP's right to operate needlessly and precipitously (i) create irreparable harm to PMCM, (ii) offer no material benefit whatsoever to any other party, (iii) create the very viewer disruption that the Bureau has said it seeks to avoid, (iv) directly prejudge the outcome of Docket 14-150 which the Bureau purports to be actively considering, (v) undermine the intent of Section 331 of the Act to provide a VHF channel to New Jersey, (vi) indisputably misinterpret the PSIP assignment standards set by

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ATSC A/65, (vii) assign a new PSIP on a completely arbitrary basis, and (viii) directly violate the Middle Class Tax Relief Act. Other than that, everything is fine.

Background

PMCM relocated WJLP, its channel 3 Nevada television station, to New Jersey by operation of Section 331 of the Communications Act. By that section, Congress required the Commission to allocate at least one VHF TV channel to each state, something which the Commission had deliberately or negligently failed to do despite the statutory mandate. The Act was intended to ensure that every state have a VHF channel allotted to it -- not just any channel but a VHF channel because V's were considered by Congress to be of superior status to U's. Although much has changed since the 1982 enactment of Section 331, the major networks in most DMAs (including the New York DMA at issue here) continue to operate on VHF virtual channels because they recognize the superiority of that channel position, both for over the air and cable purposes.

This summer, PMCM completed the construction of a first class broadcast facility to serve primarily the needs of New Jersey, as intended by the statute. Despite the fact that PMCM offered to waive its right to must carry on channel 3 in Fairfield County, Meredith Corporation (Meredith), the Hartford, CT licensee of WFSB which operates on channel 33 but uses major channel 3.1 as its PSIP, lodged an objection to WJLP's operation on channel 3, asking that the station be relegated instead to PSIP major channel 33. Meredith's Hartford station has a small overlap with WJLP in Fairfield County, CT. Several cable systems promptly asked the Bureau to permit them to defer the statutorily required carriage of WJLP's signal until the Bureau finally decided the matter. The Bureau complied, and that unprecedented action now indefinitely prevents WJLP from being viewed in most of the millions of homes in the New York DMA which receive television via cable. That action is presently on appeal to the full Commission. In the Order issued July 25, 2014, the Bureau committed to resolve the PSIP issue "without lengthy delay."

Instead, a month and a half later the Bureau took the unprecedented step of opening a public docket to consider the issues that had been raised by Meredith. (DA 14-1298, rel.

September 12, 2014) That procedural oddity opened the matter up for a new round of comments and reply comments which mostly allowed the original parties to repeat their original positions, procedurally delaying any final disposal of the PSIP objection for another couple of months. In the meantime, WJLP began operating under program test authority on RF channel 3 using the two-part virtual channel number 3.10 to distinguish it from Meredith's 3.1 two-part virtual channel, as required by ATSC A/65. What did emerge from the Docket is that (i) no actual viewer out of twenty million people in the service area has been harmed or confused in any way by WJLP's over the air operation using its distinct two-part 3.10 virtual channel and (ii) there are more than 100 overlapping identical two-part virtual channel situations in the United States (including one involving channel 4 which the Bureau had belatedly allotted to New Jersey) where both of the stations involved have operated for years without the slightest harm or confusion to anyone. The Docket therefore establishes that there is no material harm to the public or other parties whatsoever from WJLP's operation with its existing two-part virtual channel 3.10. In fact, the screen shot submitted by Meredith in connection with its request for a "cease and desist" order confirms that over the air viewers receive a very clear identification of WJLP's distinct call sign and two-part virtual channel number so there can be no confusion with Meredith's WFSB operation.

On October 23, the Video Division released the *Temporary PSIP Assignment* letter. (Copy attached). The letter "temporarily" assigns "virtual channel 33" to WJLP based on the Division's understanding of the PSIP assignment principles of Annex B of ATSC A/65. The application of Annex B is, of course, precisely the matter that is under consideration in Docket 14-150. The Video Division acted before the comment cycle was even closed in the Docket, so in reaching a temporary decision it did not have the benefit of the very comments it had solicited to help it make the decision. The *Temporary PSIP Assignment* points to no immediate harm to the public or anyone else that might have justified precipitous action pending the conclusion of the Docket. Nor does it consider even for a moment the irreparable harm that would occur to PMCM and its viewers. The letter assigns virtual channel number 33 to WJLP without specifying a minor channel number, which is a necessary component of a virtual channel, though under the Division's own peculiar rationale, virtual channel 26 would have been equally required. The *Temporary PSIP Assignment* recognized that the Video Division's virtual channel assignment theory would result in an overlap which is impermissible under Annex B. It

therefore ad-libbed a solution to the problem it had created and assigned virtual channel 33 to WJLP. As will be set forth below, the assignment was in any case inconsistent with the dictates of Annex B.

Finally, on November 7, 2014, the Video Services Division issued a letter suspending WJLP's program test authority effective at midnight (12 P.M) on November 10 unless WJLP converts to virtual channel 33. This Emergency Motion follows.

Prerequisites for a Stay

The well known criteria for granting a stay are set forth in *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921 (D.C.Cir. 1958):

- (1) Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal?
- (2) Has the petitioner shown that without such relief, it will be irreparably injured?
- (3) Would the issuance of a stay substantially harm other parties interested in the proceedings?
- (4) Where lies the public interest?

Here all of these factors require a stay.

1. Likelihood of success on the merits.

We will not dwell here on the likelihood of success on the merits since the merits are addressed in detail in the simultaneously filed application for review to which we refer the Commission for the complete analysis. Suffice it here to point to four aspects of the *Temporary PSIP Assignment* and the November 7 letter which are so patently wrong as to merit little analysis. First, while the *Temporary PSIP Assignment* insists that the Division has not prejudged the issue to be decided in Docket 14-150, the document does exactly that. It analyzes the application of Annex B and reaches a conclusion as to what the PSIP should be based on that analysis without considering, or even having available, the entire record in the Docket. (Reply Comments had not even been filed when the Division issued its October 23 letter.) If there was sufficient uncertainty about the PSIP rules in the first place to merit the extraordinary step of opening a Docket, it was plainly erroneous and premature for the Division to reach any conclusion, even a temporary one, without considering the record that was being created.

Second, in reaching its conclusion about which virtual channel number is correct, the Bureau plainly misread Paragraph 4 of Annex B when it applied the paragraph to the situation at hand. That paragraph addresses a situation which only applies if the over-the-air RF channel at issue (here channel 3) had previously been allotted to a station for NTSC operation in that same market (which it has not), had then been abandoned by that station for an alternate DTV channel (which it has not), and the former NTSC channel had then been re-allotted to the same market as a vacant channel available for new applications (which, again, it has not). The Division nevertheless somehow concluded that WJLP's RF channel 3, which is allotted in the Commission's Table of Allotments to Middletown Township, NJ in the New York DMA, is actually allotted to the Hartford-New Haven market or, alternatively, that Meredith's WFSB, licensed to Hartford, CT in the Hartford-New Haven DMA is somewhere other than in the Hartford DMA.. This bizarre conclusion could only be reached by

- (i) ignoring the requirement that the previously allotted channel had to have been "allotted" to the market in question (something which is set forth in the Table of Allotments and which clearly has not occurred here), not simply have an overlap with the new channel;
- (ii) defining "market" in a uniquely idiosyncratic way not used by the Commission anywhere else to establish the bounds of TV markets. TV markets are defined by the Commission for all other purposes by their Nielsen DMAs, which indisputably put WJLP in the New York market and WFSB in the Hartford market; The Commission's rules expressly define a television station's "market" as the station's Nielsen-defined DMA. Section 76.55(e)(2). The Division's seeming inclination to define "market" by reference to contour overlap flies in the face of the fact that the Commission expressly abandoned precisely that approach in the context of multiple ownership analysis. *See, e.g., 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules*, FCC 03-127 (released July 2, 2003).
- (iii) ignoring the fact that everywhere else in Annex B where the framers intended to refer to situations where there are overlapping station signals such as we have here, they expressly called that an "overlapping DTV Service Area." The fact that they refer in paragraph 4 to a "market" rather than an overlapping DTV

Service Area compellingly suggests that they did *not* intend paragraph 4 to apply where there were simply overlapping service areas; and

- (iv) ignoring the fact that the Bureau's novel interpretation results in two entirely different PSIPs being required to be assigned to WJLP. If markets are defined by overlapping DTV Service Areas, as the Division opines, then WJLP is *required* to be assigned both channel 26 (the over the air channel of KYW in Philadelphia *and* channel 33 (the over the air channel of WFSB in Hartford). This results in an absurdity which the Annex B framers did not address because they obviously never intended such a situation to occur. Correctly recognizing that its interpretation of Paragraph 4 results in the very sort of overlapping virtual channels which it says are anathema to the PSIP channel assignment rules, the Division had to fix the problem it had created even though Annex B neither contemplated nor condoned such ad hoc deviations from the PSIP system. It therefore assigned major channel number 33 to WJLP. Of course, as demonstrated by PMCM, Paragraph 5 of Annex B expressly provides that overlapping major channel PSIPs can be shared by non-commonly owned licensees as long as differentiating minor channels are incorporated into the PSIP. But instead of a clean, simple and indisputable interpretation of Annex B that assigns one major channel number to a station in a market by the application of straightforward protocols, the Division has created a nightmarish scenario of overlapping and incompatible major channel numbers which require ad hoc patches never approved by the framers of Annex B. This cannot be correct.

Third, the Middle Class Tax Relief Act at Section 1452(g) expressly prohibits the Commission from involuntarily assigning a television station to a new channel prior to the Incentive Auction. 47 U.S.C. Section 1452(g). The Media Bureau has taken the position in several cases that a DTV station's "channel" is defined by its virtual channel number rather than its over the air channel,¹ thus limiting must carry cable carriage rights to the station's virtual. If the Bureau is right that a DTV station's channel is now defined by its virtual channel, the *Temporary PSIP Assignment* flagrantly violates the Act by assigning WJLP a new channel.

¹ See, for example, *KSQA, LLC v. Cox Communications, Inc.*, 27 FCC Rcd 13185 (MB 2012)

Finally, the Division's November 7 letter ordering WJLP off the air itself violates the Commission's rules. 47 C.F.R. Section 73.1620(b) authorizes the Bureau to suspend program test authority only when the permittee has failed to comply with all terms of its construction permit or to resolve interference issues. 47 C.F.R. 1620 (b). Here there is no interference and WJLP's operation is indisputably in complete compliance with all of the terms of its construction permit. Moreover, if the *Temporary PSIP Assignment* is deemed, by the Media Bureau's own precedents, to be a change in WJLP's channel, then the Bureau would have to have gone through the procedures prescribed by Section 316 of the Act for such major changes. Those procedures require at least thirty days notice to the licensee with an appropriate opportunity to comment – not the peremptory one business day afforded by the Video Division here.

2. Irreparable Harm

Throughout its review of the issues raised by Meredith and the cable companies, the Video Division has consistently taken as its singular overarching guiding light the avoidance of any “confusion” by viewers or disruption to established viewing patterns. The Division has taken this view even when, as with the statutory obligation for cable systems to accommodate must carry demands, the Communications Act and Commission's rules would require a different result. The Division was especially determined to avoid a situation where the cable systems might have to change channel line-ups twice if the Bureau's initial PSIP assignment was later overturned: “Nevertheless, the technical impediments and the consumer confusion that will result if MVPDs commence carriage of [WJLP]TV) on channel 3 as its virtual channel and we then assign the station a different virtual channel shortly thereafter present serious countervailing considerations.” *Letter Order issued by William Lake, July 25, 20124, DA 14-1029, p 4.* Here, as noted above, no party to the case has pointed to a single instance of harm, confusion, or disruption which has resulted from WJLP's operation on two-part virtual channel number 3.10, including the major channel it had been automatically assigned by virtue of its pre-DTV transition operation on NTSC RF channel 3. This is not surprising since significant overlapping virtual channel signals exist throughout the United States, and throughout New Jersey in particular, without any harm to anyone.

Unaccountably and inconsistently, however, the Division ignored entirely the drastic irreparable harm to WJLP and its viewers if its PSIP had to be changed twice. First, since the

Temporary PSIP Assignment is described as “temporary” and would only apply until the expeditious resolution of the Docket, compelling WJLP to change major channel numbers now could require WJLP to change those numbers twice over a period of a few weeks. The viewer confusion that would likely result would be immediate and real, since unlike cable viewers, over the air recipients have to rescan their sets to pick up the signal and every single such set would have to be rescanned twice, maybe even three times. And unlike cable systems which have billing arrangements with their customers and can send out channel/program lists each time their channel line-ups change, a TV station can only reach its over the air customers by broadcasting notices of a proposed change and hoping the viewers get the message. They need to know that they have to rescan their set and what channel they are supposed to go to, information that is difficult to convey over the air if you are not on the right channel to begin with, or worse, not on the air at all.

WJLP has, of course, advertised its operation on channel 3 as part of its service launch and has consistently identified itself as channel 3.10 to the public. A switch now, followed by another switch in the near future, would obviously require a change in all of the station’s collateral material and a massive advertising campaign to re-educate viewers, only to have to do it all over again. This disruption and confusion would almost certainly result in permanent loss of viewers frustrated by a constantly moving channel situation. In this regard we note that the Division has already denied WJLP access to the majority of the cable audience in the New York DMA by its extraordinary indefinite deferral of all cable carriage requirements for the three largest cable systems. Because of that action, WJLP cannot qualify for listing in the major program guides distributed to newspapers that publish daily listings of TV programs. An ordinary viewer trying to find where WJLP appears on his broadcast dial therefore has no access to ordinary sources of information and can only find the station by clicking among the other stations broadcasting in the market. By consigning WJLP off to the hinterlands of the broadcast dial, the *Temporary PSIP Assignment* would effectively undermine WJLP’s access to the small remaining segment of its audience who receive the signal over the air. A broadcast station obviously cannot survive without access to an audience from which to derive advertising revenues. If the Division intends to kill this station by making it difficult or impossible for most viewers to find or access the station, it is doing a superb job.

Finally, we note that the Commission's unlawful refusal to comply with Section 331 of the Act directly caused a five year delay in the initiation of service to New Jersey. This delay severely diminished PMCM's network choices. PMCM was ultimately able to enter into an affiliation agreement with the Me-TV network which has proven to be highly popular in other markets and would support the public affairs programming which PMCM has in production. However, that agreement is premised on WJLP being on channel 3, as its DTV allotment and Section 331 would require. Forcing WJLP to identify itself as channel 33 or any other UHF virtual channel would seriously jeopardize its network agreement, crippling the station still further, probably irreparably. The combination and multiplication of Commission actions in violation of its own rules and the Act has placed the continued survival of this station in jeopardy, with the possibility of a permanent loss of service to the public a distinct possibility.

3. No harm to others

Docket 14-150 establishes beyond dispute that there has been no harm to, or confusion of, any actual viewer among the New York DMA's 20 million people. And the Bureau's deferral of carriage on cable systems in the market has ensured that Cablevision, Time Warner and Comcast have not experienced even slight inconvenience by having to carry WJLP on channel 3. They don't carry it at all. In the balancing of harms to others and harms to PMCM, we have a zero on one side of the equation and massive harm on the other. The calculation is not a hard one.

4. The public interest supports a stay

Given all the above, there can be no question of where the public interest lies. The D.C. Circuit has endorsed the Commission's view that a loss of service to the public must be weighed heavily in rescinding operating authority. "The Commission has stated that the public interest is not served by "withdrawing ... existing local service from its listeners or by having ... existing facilities lie fallow." Highlands Broadcasting Co., 9 FCC Rcd 5746, 5747 (1994); David J. Bott, 9 FCC Rcd 6426, 6427 (1994). Yet when the Commission rescinded Orion's interim operating authority, Orion was on the air and providing local service. The rescission disrupted that service, in derogation of the very interest that the Commission had sought to protect when it permitted all other stations broadcasting as of August 4 to continue doing so. The Commission has also found

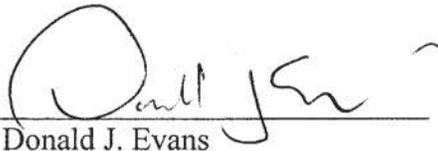
in the past that a significant improvement in service must be counted in furtherance of the public interest. See *Western Television Co.*, FCC 74-753 (1974); see also *Bechtel v. FCC*, 10 F.3d 875, 882 (D.C.Cir.1993).” *Orion Communications, Ltd. V FCC*, 131 F.3d 176, 179-180 (D.C. Cir. 1998).

There is no reason in the world why PMCM should be forced to change from its two-part virtual channel 3.10 while the matter is under consideration by the Bureau and, if necessary, by the Commission. Because no one is being harmed by WJLP’s current operation, there is no urgency about temporarily assigning a new virtual channel number while the staff remains, as it itself declares, undecided about what virtual channel the rules require. Leaving the status quo permits the Bureau to complete its review of the Docket in short order, a review which will hopefully result in permanently leaving WJLP with the two-part virtual channel number mandated by the Annex B standards. To do otherwise helps no one, confuses the public, violates Section 1452(g) of the Act, and causes irreparable damage to a station whose operation on a VHF channel the Commission has been commanded by the Court to permit. A stay of the November 7 Order and the *Temporary PSIP Assignment* should be granted forthwith.

In view of the imminent loss of service to more than 20 million people by the Bureau’s action, PMCM will seek review at the appellate court if action is not taken by 2:00 PM today.

Respectfully submitted,

PMCM TV, LLC

By: 
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November 10, 2014



Federal Communications Commission
Washington, D.C. 20554

November 7, 2014
(Service via Email)

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Re: PMCM TV, LLC
WJLP-TV, Middletown Township, NJ
File Nos. BPCDT-20130528AJP and
0000001037
Facility ID No. 86537
Docket No. 14-150

Counsel:

PMCM TV, LLC (PMCM), the permittee of station WJLP-TV (formerly KVVN(TV)), RF channel 3, Middletown Township, New Jersey, is presently operating pursuant to program test authority.¹ For the reasons discussed below, we are suspending program test authority effective 12:00 pm, EST, November 10, 2014.

By letter released October 23, 2014 (October 23 Letter), the Video Division assigned station WJLP-TV virtual channel 33 for use on an interim basis while the Media Bureau sought comment on (1) a request for a Declaratory Ruling by Meredith Corporation (Meredith), the licensee of WFSB(TV), RF channel 33, virtual channel 3, Hartford, Connecticut, that WJLP-TV be assigned virtual channel 33 and (2) an "Alternative PSIP Proposal" by PMCM requesting that WJLP-TV be assigned a two-part virtual PSIP channel 3.10 (with any additional streams eventually transmitted as 3.11, 3.12, etc.), while

¹ By letter dated September 29, 2014, PMCM, through its counsel, notified the Commission that it had completed construction of the above-referenced facilities and was commencing equipment tests as of that date.

WFSB(TV) would retain virtual channels 3.1 through 3.9.² The Division assigned WJLP-TV virtual channel 33 on an interim basis after being informed by Meredith, ION Media License Company (ION)³ and CBS Broadcasting Inc. (CBS)⁴ (collectively the Joint Parties) that as of September 30, 2014, PMCM “has commenced program-length commercial programming and network (ME-TV) programming identifying itself as ‘Channel 3’ and using virtual channel 3.10, which it can only use if it obtains a waiver that the Commission has never issued.”⁵ In so doing, the Division acknowledged that PMCM has raised a number of arguments why it should not be required to use virtual channel 33, and the Division emphasized that the interim assignment of virtual channel 33 for use by WJLP-TV was without prejudice to consideration of these pending arguments and PMCM’s “Alternative PSIP Proposal” to use virtual channel 3.10, which would occur after the pleading cycle has closed on that proposal and Meredith’s request for declaratory ruling.⁶ By letter dated November 4, 2014, the Joint Parties notified the Commission that WJLP-TV continues to operate on virtual channel 3.10, in violation of the Commission’s rules and the Division’s October 23 Letter. The Joint Parties submitted a photograph of the WJLP-TV programming aired on November 4 at 10:32 am, showing that the station was operating with virtual channel 3.10. The New York Field Office of the Enforcement Bureau has confirmed that WJLP-TV was still operating with virtual channel 3.10 as of 9:09 am, November 7.

Upon completion of construction of a facility authorized in its construction permit, a permittee may operate the facility pursuant to program test authority, provided that an application for a license to cover is filed within 10 days, and program test authority is automatically terminated by final determination upon the license application.⁷ The granting of program test authority, however, should not be construed as approval of the license application,⁸ and the Commission “reserves the right to revoke,

² Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau to Donald J. Evans, Esq., DA 14-1528 (rel. Oct. 23, 2014), available at http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=53948. Comments and reply comments were due by October 14 and October 29, 2014. See *Media Bureau Seeks Comment on Request for Declaratory Ruling by Meredith Corporation and “Alternative PSIP Proposal” by PMCM TV, LLC for KVNV(TV), Middletown Township, New Jersey*, Public Notice, MB Docket No. 14-150 (rel. Sept. 12, 2014).

³ ION is the licensee of station WPXN-TV, New York, New York, which is carried on channel 3 on Cablevision cable systems in the New York DMA.

⁴ CBS is the licensee of KYW-TV, RF channel 26, virtual channel 3, Philadelphia, Pennsylvania, and has contour overlap with WJLP-TV.

⁵ The Joint Parties further requested that the Media Bureau “immediately notify [PMCM] that any further equipment or program tests initiated by [WJLP-TV] . . . must use virtual channel 33 pending final action by the Commission in [MB Docket No. 14-150].”

⁶ Section 73.682(d) of the Commission’s rules requires digital broadcast television signals to comply with ATSC A/65C (“ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006”) (“PSIP Standard”). 47 C.F.R. § 73.682(d) (incorporated by reference, see § 73.8000). As explained in the Division’s October 23 letter, the PSIP Standard does not provide for or require the sharing of virtual channels by licensees with overlapping contours that are not commonly owned, and that because the Division had not yet ruled on PMCM “Alternative PSIP Proposal,” PMCM currently had no inherent right to use virtual channel 3 where it was already used by WFSB(TV) and KWTY-TV. Annex B, Section 1.4 of the PSIP Standard would assign WJLP-TV, as a newly licensed station, virtual channel 33, which is WFSB(TV)’s RF channel, and the Division further explained that its assignment of virtual channel 33 on an interim basis was consistent with its previous interpretation of the PSIP Standard in a similar case. See October 23 Letter at 3.

⁷ 47 C.F.R. § 73.1620(a)(1), (c).

⁸ 47 C.F.R. § 73.1620(e).

suspend, or modify program tests by any station without right of hearing for failure to comply adequately with all terms of the construction permit . . .”⁹

Because station WJLP-TV is operating in a manner inconsistent with the Division’s October 23 Letter directing the station to use virtual channel 33 on an interim basis, WE HEREBY SUSPEND PROGRAM TEST AUTHORITY for the operation of WJLP-TV, Middletown Township, New Jersey, effective 12:00 pm, EST, November 10, 2014. Continued operation of the station after 12:00 pm, EST, November 10, 2014, and prior to issuance of a letter by the Division reinstating program test authority, will be considered an unauthorized operation of the station and will result in the institution of a forfeiture or other proceeding to enforce compliance. The Division may issue a letter reinstating program test authority upon notification, supported by the declaration, under penalty of perjury, of one of PMCM TV LLC’s principals, that it will operate WJLP-TV using virtual channel 33 on an interim basis, as specified in the Division’s October 23 Letter. Any notification should be filed with the Office of the Secretary and an electronic copy also should be sent to Hossein.Hashemzadeh@fcc.gov, Joyce.Bernstein@fcc.gov and Kevin.Harding@fcc.gov.

Sincerely,



Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau

cc: Tara M. Corvo, Esq.
Frederick W. Giroux, Esq.
Seth A. Davidson, Esq.
William LeBeau, Esq.
Stephen Maguire/District Director/NY Field Office

⁹ 47 C.F.R. § 73.1620(b). The rule further provides that “All operation under program test authority shall be in strict compliance with the rules governing broadcast stations . . .” *Id.* at (d).



Federal Communications Commission
Washington, D.C. 20554

DA 14-1528
Released: October 23, 2014

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Counsel:

PMCM TV, LLC (PMCM) is the permittee of station WJLP-TV (formerly KVVV(TV)), RF channel 3, Middletown Township, New Jersey. As discussed below, we hereby assign station WJLP-TV virtual channel 33 for use on an interim basis.

Meredith Corporation (Meredith), the licensee of WFSB(TV), RF channel 33, virtual channel 3, Hartford, Connecticut had filed an informal objection to PMCM's above-referenced application for a construction permit for the station, objecting solely to PMCM's future operation on virtual channel 3, the same virtual channel used by WFSB(TV). The staff dismissed the informal objection as premature, stating that "an objection to virtual channel designations is customarily considered after grant of the license modification application in a separate proceeding that solely addresses the virtual channel designation."¹ By Public Notice released September 12, 2014, the Media Bureau sought comment on (1)

¹ April 17, 2014 Letter from Hossein Hashemzadeh, Deputy Chief, Video Division to PMCM TV, LLC, available at http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=49395.

a request for a Declaratory Ruling by Meredith that WJLP-TV be assigned virtual channel 33 and (2) an "Alternative PSIP Proposal" by PMCM requesting that WJLP-TV be assigned a two-part virtual PSIP channel 3.10 (with any additional streams eventually transmitted as 3.11, 3.12, etc.) while WFSB(TV) would retain virtual channel 3.1 through 3.9.² Comments were due by October 14 and reply comments are due October 29, 2014.

By letter dated September 29, 2014, PMCM, through its counsel, notified the Commission that it had completed construction of the above-referenced facilities and was commencing equipment tests as of that date. On October 3, 2014, Meredith, ION Media License Company (ION) and CBS Broadcasting Inc. (CBS) (collectively the Joint Parties) made a joint filing stating that as of September 30, 2014, PMCM "has commenced program-length commercial programming and network (ME-TV) programming identifying itself as 'Channel 3' and using virtual channel 3.10, which it can only use if it obtains a waiver that the Commission has never issued." The Joint Parties further request that the Media Bureau "immediately notify [PMCM] that any further equipment or program tests initiated by [WJLP-TV] . . . must use virtual channel 33 pending final action by the Commission in [MB Docket No. 14-150]."

According to the Joint Parties, Meredith station WFSB(TV) and CBS station KYW-TV, RF channel 26, Philadelphia, Pennsylvania, both operate with virtual channel 3 and have contour overlap with WJLP-TV; ION's station WPXN-TV, New York, New York, is carried on channel 3 on Cablevision cable systems in the New York DMA. The Joint Parties assert that "a principal purpose for the Commission's adoption of the PSIP Standards for assignment of digital virtual channels to market newcomers [such as WJLP-TV] was to avoid viewer confusion and to permit incumbent stations such as Meredith's WFSB, CBS's KYW, and ION's WPXN to retain the equity and brand identification they have built on their channels over many years." The Joint Parties further assert that because PMCM's station is being newly licensed in the market, it "has no existing identification with virtual channel 3 among its potential viewers" and "[r]equiring [WJLP-TV] to use virtual channel 33 for equipment and program tests thus would not harm [WJLP-TV] or engender viewer confusion."

PMCM filed a response on October 7, 2014, suggesting that its use of virtual channel 3.10 is consistent with the Media Bureau's July 25, 2014 letter ruling waiving section 76.64(f)(4) of the rules, 47 C.F.R. § 76.64(f)(4), to allow certain MVPDs to defer implementing the must-carry request and channel position election of PMCM for WJLP-TV until 90 days after the date of a final decision on WJLP-TV's virtual channel.³ According to PMCM, that letter observed that 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 service area," and that by adopting a major/minor channel number "that is *different* from Meredith's 3.1 channel," PMCM is complying with the Media Bureau's directive.⁴ The Bureau's letter decision, however, did not address the merits of the appropriate virtual

² *Media Bureau Seeks Comment on Request for Declaratory Ruling by Meredith Corporation and "Alternative PSIP Proposal" by PMCM TV, LLC for KYNV(TV), Middletown Township, New Jersey*, Public Notice, MB Docket No. 14-150 (rel. Sept. 12, 2014). As explained at n.1 of the Public Notice, a station's RF channel is the channel allotted to the station's community in the Post-Transition Table of DTV Allotments, 47 C.F.R. § 73.622(i). A station's virtual channel number is the number that the PSIP Standard attaches to a broadcaster's current DTV RF channel number regardless of the actual RF channel used for DTV transmission. It is the channel number that television viewers physically tune to in order to view a television station. Section 73.682(d) requires digital broadcast television signals to comply with ATSC A/65C ("ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006") ("PSIP Standard"). 47 C.F.R. § 73.682(d) (incorporated by reference, see § 73.8000).

³ *Letter to Tara A. Corvo, Esq. from William T. Lake, Chief, Media Bureau*, 29 FCC Rcd 9102 (MB 2014).

⁴ See October 7, 2014 Letter from Donald J. Evans, Esq. to Marlene Dortch at 2, para. b (emphasis in letter).

channel for WJLP-TV and PMCM's proposal to bifurcate channel 3 was first raised informally with the Bureau in a subsequent meeting with the staff. Accordingly, the Bureau's letter cannot be read as sanctioning PMCM's use of virtual channel 3.⁵

The PSIP Standard does not provide for or require the sharing of virtual channels by licensees with overlapping contours that are not commonly owned,⁶ and we have not yet ruled on PMCM's "Alternative PSIP Proposal." Because PMCM has no inherent right to use virtual channel 3 at this time, which is already used by WFSB(TV) and KYW-TV in areas that are also covered by WJLP-TV, we believe it appropriate that WJLP-TV operate with the virtual channel assigned under the PSIP Standard while we consider PMCM's "Alternative PSIP Proposal" in MB Docket No. 14-150.

Annex B, Section 1.4 of the PSIP Standard states that:

If, after the transition, a previously used NTSC RF channel in a market is assigned to a newly-licensed DTV broadcaster in that market, the newly-licensed DTV broadcaster shall use, as his channel number, the number of the DTV RF channel originally allocated to the previous NTSC licensee of the assigned channel.

Therefore, the PSIP Standard assigns WJLP-TV, as a newly licensed station,⁷ virtual channel 33, which is WFSB(TV)'s RF channel.⁸ While PMCM argues that it is not a "newly licensed" station in the market because it was operating on NTSC channel 3 in Ely, Nevada prior to moving the station to New Jersey pursuant to section 331(a) of the Communications Act,⁹ our assignment of virtual channel 33 to WJLP-TV on an interim basis is consistent with the Division's decision allotting channel 5 to Seaford, Delaware pursuant to section 331(a) of the Act.¹⁰ There, the proposed allotment had contour overlap with WTTG(TV), RF channel 36, virtual channel 5, Washington, D.C. and the Seaford allotment was assigned virtual channel 36, which is WTTG(TV)'s RF channel.¹¹

We acknowledge that PMCM has raised a number of arguments why it should not be required to use virtual channel 33. In addition, the Commission may grant exceptions to the PSIP Standard on a case-by-case basis.¹² We emphasize that our interim assignment of virtual channel 33 for use by WJLP-

⁵ The remainder of the arguments in PMCM's October 7 response have been raised in connection with Docket 14-150 and will be addressed in that proceeding.

⁶ Annex B.1(5) of the PSIP Standard provides that a broadcaster that owns or controls broadcast licenses on two or more different RF channels with overlapping service areas may use a common major (virtual) channel for the stations. The broadcaster may choose one of its RF channels as its major channel and the minor channel number fields must be portioned to insure that there is no duplication of the two-part channel number in the service area, including the overlapping service area of other broadcasters using the same major channel number.

⁷ PMCM filed the above-referenced application for a license to cover the construction of WJLP-TV on October 14, 2014.

⁸ As noted above, WJLP-TV also has contour overlap with KYW-TV which operates on RF channel 26. That channel however, is not available for use by WJLP-TV because it is the RF and virtual channel of WHPX-TV, New London, Connecticut which has contour overlap with WJLP-TV.

⁹ 47 U.S.C. § 331(a).

¹⁰ *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Seaford, Delaware)*, MB Docket No. 09-230, Report and Order, 25 FCC Rcd 4466 (Vid. Div. 2010)(subsequent history omitted).

¹¹ *Id.* at 4472, para. 15.

¹² *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Report and Order, 19 FCC Rcd 18279, 18346, para. 153 (2004).

TV is without prejudice to these pending arguments and PMCM's "Alternative PSIP Proposal" to use virtual channel 3.10, which will be considered after the pleading cycle has closed on that proposal and Meredith's request for declaratory ruling.

Sincerely,

Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau

cc: Tara M. Corvo, Esq.
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CERTIFICATE OF SERVICE

I, Donald J. Evans, hereby certify that on this 10th day of November, 2014, I caused copies of the foregoing "Emergency Motion for Stay of Suspension of Service Suspension and Virtual Channel Re-Assignment" to be placed in the U.S. Postal Service, first class postage prepaid and/or, as noted below, sent by electronic mail to the following:

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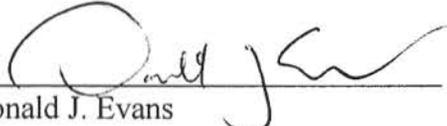
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