

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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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 KVVV(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 KVVV(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 KWWY-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.

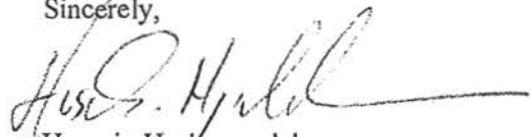
⁷ 47 C.F.R. § 73.1620(a)(1), (c).

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
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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).

CERTIFICATE OF SERVICE

I, Donald J. Evans, hereby certify that on this 10th day of November, 2014, I caused copies of the foregoing "Application for Review" 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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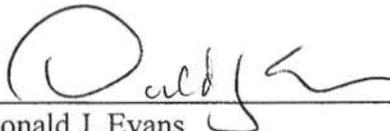
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