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November 17, 2014

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Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: GN Docket No. 12-268
ET Docket No. 13-26
Feasibility Checker program released
November 3, 2014

Dear Ms. Dortch:

In connection with the development of the software necessary to evaluate the feasibility of assigning television channels to stations in the course of the Incentive Auction, PMCM TV, LLC (PMCM) believes that, under current precedent, the Commission must ensure that the software includes a second channel variable in locating vacant channels. Allow me to briefly explain.

In the process of initiating service recently over Channel 3 licensed to Middletown Township, NJ, we have learned that the Media Bureau interprets the ATSC A/65 protocols to prohibit overlap of TV signals using PSIPs with the same major channel number. A PSIP (Program and System Information Protocol) is the code adopted by digital TV broadcast licensees to identify their signal to receivers and to provide other station information. That is why it is sometimes called a "virtual channel." A virtual channel is defined by both its major channel (sometimes but usually not its over-the-air channel) and, to the right of the dot, a minor channel number which must be different from the minor channel number of any other

overlapping station using the same major channel. The process for assigning PSIPs is set forth in Annex B of the ATSC A/65 Report, which is incorporated by reference in the Commission's rules.¹ See Section 73.682(d) Normally PSIPs are adopted without any FCC action at all and are non-controversial because the PSIP protocols are designed to prevent any problem from occurring.

The PSIP which PMCM selected when we went on the air complied with the Annex B protocols by adopting a different minor channel component as part of its PSIP so that it would be distinguished from the other two TV stations which shared the same major channel and whose signal we overlap. Specifically, we adopted virtual channel "3.10" (major channel 3.minor channel 10) rather than the "3.1" virtual channel used by the other overlapping stations. We began operating under program test authority without incident and without any confusion to any viewers of either our station or anyone else's.

On October 23, 2014, however, the Video Services Division issued a letter temporarily assigning us virtual channel 33.² While we believe that assignment was patently erroneous and are separately appealing it to the full Commission, what is important for Incentive Auction purposes is the Media Bureau's position, which it has now enforced by shutting down PMCM's operation on virtual channel 3.10, that the PSIP rules absolutely forbid overlap of stations with the same major channel PSIP unless the stations are commonly owned. This ruling has enormous consequences for the Incentive Auction process.

Let's use the New York DMA as a familiar example. In this DMA there are signals emanating from more than 48 DTV stations. The vast majority of them use virtual channels different from their over the air channels. Depending on how many stations elect to exit broadcasting and how much spectrum remains available to relocate TV stations, the Commission will have to re-pack the remaining stations into a smaller amount of space. To accommodate this re-packing, a certain number of stations will have to change locations either by moving their own facilities or sharing facilities with other stations. The task of the Feasibility Checker program is to figure out which channels can be located where. That task is difficult enough if it is only solving for the stations' over the air RF channels, but under the Bureau's October 23 declaration, *the program would also have to solve for the virtual channels of all the stations involved.* If there can be no overlap of virtual channels, then the repacking must account for that constraint in determining where channels can be assigned. Significantly, the PSIP protocols prohibit the major channel number of a digital station from being changed even if its RF channel changes. (Annex B at Para. 3) So the Commission has less flexibility with respect to virtual channel changes than it does for RF channel changes.

A word search of the Commission's Incentive Auction Order revealed that the word "PSIP" was nowhere to be found. It would appear that PSIPs were on no one's radar screen in developing the constraints affecting re-packing. That could be because up until October, no one would have guessed that virtual major channels could not overlap with other identical virtual major channels. There are over 105 instances of such overlaps among digital stations in the U.S., but the Commission has not heretofore ruled that those operations are unlawful. The problem of overlapping major channels would be eliminated if stations were allowed to differentiate their

¹ A copy of Annex B is attached.

² See attached letter.

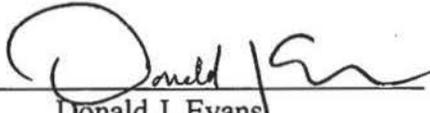
stations by minor channels, as Annex B plainly permits, but the Bureau currently forbids that approach.

In a meeting with the Video Division staff in August and in subsequent filings in Docket 14-150 (the docket which is considering the specific PSIP to be assigned to us), we have pointed out that it will necessarily complicate the re-packing process if the re-packing algorithm must solve for two protected channels for each station rather than one. The Bureau technical staff has assured us that this would not be a problem, but that is certainly not intuitively obvious. And in any case, the Feasibility Checker program must, unless the Bureau's October 23 letter is reversed, be modified to ensure that no overlap of virtual major channels occurs.

The PSIP protocols could, of course, be modified to make even more clear that overlaps of virtual channels with distinct major channel/minor channel combinations are perfectly permissible, but that would take an action by the independent ATS Committee who established the PSIP protocols in the first place, and then an FCC rulemaking to adopt the change. As we have indicated, we have appealed the Bureau's October 23 action to the full Commission, but it has taken no action on the matter. We will provide notice in this Docket if anything changes, but in the meantime the Feasibility Checker must be modified to ensure that virtual channels are accorded the same protection from overlap with co-channel stations as RF channels in designing the post-auction station landscape.

Respectfully submitted,

PMCM TV, LLC

By: 
Donald J. Evans

cc: Gary Epstein
Howard Symons

Annex B: Additional Constraints on Virtual Channel Table For the U.S. (Normative)

B.1 ASSIGNMENT OF MAJOR CHANNEL NUMBER VALUES FOR TERRESTRIAL BROADCAST IN THE U.S.

The assignment of `major_channel_number` values in the U.S. shall be per the requirements established in this section.

B.1.1 Mandatory requirements for Major Channel Number Values in the Range 2–69

The following provisions assign `major_channel_number` values 2 through 69 uniquely to licensees licensed to broadcast digital ATSC signals and guarantee that the two-part channel number combinations used by a licensee will be different from those used by any other licensee with an overlapping DTV Service Area¹⁸.

- 1) For a licensee with an NTSC license existing at the time it commences digital service, the `major_channel_number` for the virtual channels controlled by the licensee shall be set in the TVCT to the NTSC RF channel number existing at the time it commenced digital service. For example, assume a broadcaster who has an NTSC broadcast license for RF channel 13 is assigned RF channel 39 for digital ATSC broadcast. That broadcaster is required to use `major_channel_number` 13 for identification of the analog NTSC channel on RF channel 13, as well as the digital virtual channels it is controlling on RF channel 39.
- 2) For a new licensee without an existing NTSC license at the time it commenced digital service, the `major_channel_number` for the digital virtual channels controlled by the licensee shall be set to the FCC-assigned RF channel number for ATSC digital TV broadcast. For example, assume a broadcaster who has no NTSC broadcast license applies and receives a license for digital ATSC broadcast on RF channel 49. That broadcaster is required to use `major_channel_number` 49 for identification of the digital virtual channels that it is controlling on RF channel 49.
- 3) If the RF channel assigned to a licensee for digital ATSC broadcast is changed for any reason, the `major_channel_number` used by that licensee shall not change.
- 4) 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.
- 5) The following requirement establishes a limited exception to mandatory requirements #1 through #4 above. If a licensee owns or controls broadcast licenses for two or more different RF channels having overlapping Service Areas, a common value of `major_channel_number` may be used for all services on all channels. In this case, the value chosen for the common `major_channel_number` shall be as determined in mandatory requirements 1-4 above for any one of the RF channels. The values in the

¹⁸ This term is defined in 47 CFR §73.622(e) [8].

minor_channel_number fields shall be partitioned to ensure that there is no duplication of the two-part channel number in the DTV Service Area, including the overlapping DTV Service Areas of other licensees using that same major_channel_number.

- 6) The two-part channel numbers for other broadcasts may be included in the TVCT of the DTV transport stream, provided that the channel_TSID and source_id are exactly associated with the two-part channel number combinations used by the referenced licensee and there is no duplication with those used by any licensee whose DTV Service Area overlaps with the emitting station's DTV Service Area.
- 7) A licensee may include in the transmitted multiplex programming originating from a different licensee. In this case, the major/minor channel numbers of the original broadcast may be used to label those services, as long as the major/minor channel number combinations are coordinated in the local Service Area to avoid conflicts in the channel numbers. The business coordination process for this requirement is beyond the scope of this document.

B.1.2 Major Channel Number Values in the Range 70–99

Values for major_channel_number from 70 to 99 may be used to identify groups of digital services carried in an ATSC multiplex that the licensee wishes to be identified by a different major channel number. Values 70 through 99 must be unique in each potential receiving location or the receiver will not be able to correctly select such services. For example a local licensee transmitting community college lectures in its bit stream may want to use a major_channel_number different than its own major_channel_number for the virtual channel carrying the lectures. The assessment of the feasibility of using this capability, as well as the coordination process for assignment of these major_channel_number values is beyond the scope of this document.

B.1.3 Major Channel Numbers for Translated Signals

For a licensee's signal carried by a digital TV translator, the major/minor channel numbers shall remain the same as the original broadcast station unless the major channel conflicts with a licensee operating in the Service Area of the translator. In that case, the translator shall change the major number to a non-conflicting number. Note: 47 CFR §74.790 (f) [23] may apply.

B.2 REQUIREMENT TO TRANSMIT ANALOG TRANSMISSION SIGNAL ID

- a) Broadcasters which reference an NTSC signal by inserting a channel_TSID in a VCT shall cause insertion of an analog Transmission Signal ID within the VBI of each referenced NTSC signal per CEA-608 [5]. Refer to Section D.10 for a discussion of the use of the analog Transmission Signal ID.



Federal Communications Commission
Washington, D.C. 20554

DA 14-1528
Released: October 23, 2014

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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) 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 KVVN(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 3.10.⁵

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,

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Deputy Chief, Video Division
Media Bureau

cc: Tara M. Corvo, Esq.
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