

 ORIGINAL

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

For transmission to: The Commission

**REPLY TO ION OPPOSITION
TO APPLICATION FOR REVIEW**

1. PMCM TV, LLC (“PMCM”) hereby replies to the Opposition filed by ION Media License Company, LLC (“ION”) in response to PMCM’s Application for Review (“Application”) in the above-captioned matter.¹

2. The ION Opposition is so rife with blatant errors of all sorts that its persuasive value is nil. Some of the more obvious examples:

On page 1, ION claims that PMCM “began broadcasting programming on virtual channel 3.10 ... in defiance of the temporary assignment to virtual channel 33.” In fact, PMCM began operating with two-part virtual channel 3.10 on October 2, three weeks *before* – and therefore clearly not “in defiance of” – the October 23 letter of the Video Division (“Division”) purporting to assign “virtual channel 33” to Station WJLP.

On page 3, ION claims that ATSC A/65 is intended to “avoid[] the use of the same virtual channel by stations with overlapping service areas.” As PMCM has demonstrated, ATSC A/65 in fact contemplates, *with approval*, the use of the same major_channel_number by multiple stations with overlapping services areas. *See, e.g.*, ATSC A/65, Annex B, Preamble and B.1.1(5).

¹ Meredith Corporation and CBS Broadcasting, Inc. jointly filed a separate Opposition to PMCM’s Application for Review. Simultaneously herewith PMCM is submitting a separate Reply to the Meredith/CBS. PMCM’s reply to each of the Oppositions is incorporated by reference in its reply to the other.

Also on page 3, ION says that the Communications Act is designed to “ensure interference-free broadcasting”, the suggestion being that PMCM’s use of two-part virtual channel 3.10 is causing or may cause some kind of “interference”. The use of identical two-part virtual channel numbers does *not* entail *any* kind of “interference” recognized by either the Communications Act or the Commission’s rules, nor does such use lead to adverse effects. That is underscored both by (a) the complete lack of *any* showing of harm supposedly attributable to WJLP’s use of channel 3.10; and (b) the Commission’s own experience: more than 100 situations currently exist in which stations with overlapping service areas use the same two-part virtual channel number. Since the Commission has for years condoned such overlapping situations, it is clear that they have not resulted in any “interference”.²

Also on page 3, ION asserts, without citation, that the use of “channel 3” by CBS and Meredith in their respective service areas “includes the authority to operate on all of the minor channel numbers that fall under major channel 3 (*i.e.*, 3.1, 3.2, 3.3, ... 3.10 *et seq.*).” That misguided notion is contradicted by Annex B, B.1.1(5), which provides for the “partitioning” of minor_channel_numbers when overlapping stations use identical major_channel_numbers.³ See also Annex B, Preamble.

Also on pages 3-4, ION mischaracterizes Annex B, B.1.1(4). Contrary to ION’s description, for B.1.1(4) to apply, the “newly-licensed station” must be using a channel that was both (a) previously allotted to its market and (b) previously used in that market for NTSC operation by another station which abandoned the channel when converting to DTV operation. In WJLP’s case, RF channel 3 was *not* previously allotted to the New York DMA – *i.e.*, the market to which WJLP’s RF channel 3 has been allotted – and no other station used RF channel 3 for NTSC purposes in that market. Moreover, Station WJLP, licensed since 2002, *cannot* legitimately be deemed to be “newly-licensed”.⁴

On page 4, ION inaccurately claims that PMCM is responsible for the allotment of RF channel 5 in Seaford, Delaware and is the licensee of the station on that channel. PMCM did *not* initiate the proceeding that led to that allotment, and PMCM is not now and never has been the licensee of the Seaford station (which has since been moved to Dover, Delaware).

On page 4, footnote 12, ION mischaracterizes the holding in *Associated Christian Television Systems, Inc.*, 25 FCC Rcd 9237 (Video Division 2010). According to ION, the Division there refused a licensee use of a particular virtual channel “because” its station’s contour overlapped that of another station using the same virtual channel. That is *not* what the Division held. Rather, the use of the contested virtual channel number was inconsistent with

² Note also that PMCM’s use of two-part virtual channel 3.10 reflects a “partitioning” of the minor_channel_number in conformity with Annex B, B.1.1(5), which adds a further ATSC-approved measure of protection against any adverse consequences.

³ For the same reason, ION’s conclusory and unsupported statement that ATSC A/65 “does not authorize WJLP to use virtual channel 3.10” (ION Opposition at 6) is obviously wrong.

⁴ And even if WJLP were deemed to be “newly-licensed”, its major_channel_number would be determined by reference to Annex B, B.1.1(2), *not* Annex B, B.1.1(4).

the direction of ATSC A/65, Annex B. The Division's decision merely required the licensee to comply with ATSC A/65. Overlap *vel non* with any other station does not appear to have been material to the Division's decision.⁵

These are not the only such problems with ION's Opposition, but they demonstrate, as a threshold matter, ION's comprehensive unreliability.

3. Even though it is styled as an "opposition", ION's pleading does not really "oppose" PMCM's Application. Much like the Meredith/CBS Opposition, ION's Opposition is almost totally non-responsive to PMCM's arguments. *See* PMCM Reply to Meredith/CBS Opposition at 2-3. To the limited extent that ION does attempt to address PMCM's arguments, ION is plainly wrong.

4. As discussed above, ION's attempt (at pages 3-6) to challenge PMCM's use of two-part virtual channel 3.10 and to defend the Division's purported assignment of "virtual channel 33" fails to address, much less rebut, PMCM's demonstration of both the correctness of its use of channel 3.10 and the incorrectness of the Division's contrary analysis.

5. ION claims that the Division's effort to suspend WJLP's program test authority was correct. The analysis underlying that claim is mistaken. According to ION, program test authority may be suspended if (a) operation pursuant to that authority is not in strict compliance with the Commission's rules or (b) the permittee is not complying with the terms of its permit. ION Opposition at 6-7.

6. First, it is not at all clear that Section 73.1620(d) – on which the first of ION's two claims is based – supports ION. Section 73.1620(d) makes no reference to suspending program test

⁵ In fact, the Division's decision in *Associated Christian* supports PMCM here. The Division there emphasized that Annex B mandates that "[f]or broadcasters with existing NTSC licenses, the major channel number for the existing NTSC channels, as well as the digital virtual channels, controlled by the broadcaster, shall be set to the current NTSC RF channel number." Since Station WJLP operated on NTSC RF channel 3 prior to the DTV transition, that provision (*i.e.*, B.1.1(1)) similarly mandates that WJLP utilize major_channel_number 3.

authority. But even if Section 73.1620(d) could be read as ION suggests, that still would not support ION. In ION's view, PMCM's use of two-part channel 3.10 was "not in strict compliance" with the rules. But PMCM's use of major_channel_number 3 is expressly mandated by Annex B, B.1.1(1), and its partitioned minor_channel_number is explicitly contemplated by Annex B, B.1.1(5). So PMCM's operation complies with the only Commission rule addressing virtual channel designation, *i.e.*, Section 73.682(d), which merely requires compliance with ATSC A/65, Annex B. ION has not even attempted to rebut this analysis.

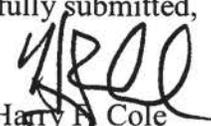
7. With respect to Section 73.1620(b), which *does* authorize suspension of program test authority, such suspension could occur only if PMCM were operating in violation of the terms of its construction permit. But as ION itself concedes (at page 7-8, albeit not in this context), WJLP's virtual channel is not a term of its permit. As a result, Section 73.1620(b) does not authorize suspension of program test operation here, since operation on any particular virtual channel does not violate any term of the permit. Of course, if ION prefers to argue that PMCM violated the terms of its permit by using two-part virtual channel 3.10, then ION must acknowledge that the Division's purported assignment of "virtual channel 33" by letter dated October 23 effectively modified PMCM's permit – since the designation of a term not originally included in the permit obviously effects a modification of the permit. But such a modification would violate Section 316 of the Act. That is, either way the Division's attempt to suspend WJLP's program test authority is barred.

8. Finally, in addressing PMCM's argument concerning Section 1452(g)(1) of the Middle Class Tax Relief Act of 2012, ION chooses, whether by negligence or design, to misquote the relevant statutory language. According to ION, Section 1452(g)(1)(A) prohibits the involuntary modification of a television licensee's spectrum usage rights. But ION ignores the rest of that section, which prohibits the involuntary "reassign[ment of] such a licensee to another television channel." That language is important because the Bureau has taken the position that the statutory

term “channel number on which ... [a] station is broadcast over the air” (*see* 47 U.S.C. §534(b)(6)) means the station’s virtual channel number, *not* its actual RF channel. *E.g., KSQA, L.L.C., 27 FCC Rcd 13185 (Policy Div. 2012)*. While PMCM does not agree with the Bureau’s position in that regard, the fact remains that, as far as the Bureau is concerned, a change in a station’s virtual channel effects a change in its “over the air” broadcast channel as that term is used in the Communications Act. And if that’s the case, then the purported assignment of “virtual channel 33” to WJLP constitutes an involuntary reassignment of WJLP to another television channel.

9. ION’s deplorably inaccurate Opposition is entitled to no substantive consideration. It fails even to address, much less rebut, PMCM’s demonstration of the invalidity of the Division’s insistence, on penalty of loss of program test authority, that PMCM utilize a virtual channel number entirely inconsistent with ATSC A/65.⁶

Respectfully submitted,


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December 10, 2014

⁶ PMCM is constrained to note also that ION continues to cite its “agreement” with Cablevision as a factor in ION’s favor. ION Opposition at 7. That agreement is presumably the channel positioning agreement for which, according to ION, “both parties provided, and received, valuable consideration.” As PMCM has previously pointed out, though, the Communications Act (Section 534(b)(10)) and the Commission’s rules (Section 76.60) bar such arrangements. In other words, ION’s “public interest” argument is founded on an unlawful arrangement.

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 10th day of December, 2014, I caused copies of the foregoing "Reply to ION Opposition to Application for Review" to be placed in the U.S. Postal Service, first class postage prepaid or, as noted below, sent by electronic mail to the following:

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/s/ ~~Harry F. Cole~~
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