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December 17, 2014

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:

This letter summarizes the brief ex parte meeting between myself and Harry Cole of my office representing PMCM TV, LLC and Howard Symons, William Lake, Dorann Bunkin, Mark Colombo, Mary Margaret Jackson, and Julissa Marenco on December 15, 2015. The meeting was intended to express our concern that stations' PSIP-based major channel numbers, which were not covered at all or factored into the Feasibility Checker program, need to be taken into account. This concern is founded upon the Media Bureau's tentative determination that the major channel in a PSIP is entitled to protection from overlap by any later entering licensee. This principle is nowhere to be found in the major channel assignment protocols set forth in ATSC A/65 (Annex B) which determines how the major channel in a PSIP is to be assigned, but if true, it would require a new variable to be included in the Feasibility algorithm since each licensee would be entitled to freedom from major channel overlap within its service area.

Mr. Symons indicated that this was unlikely to be a problem for involuntary re-packing situations since most stations would not be relocating physically and would be retaining the same major channel in their PSIP. In the case of channel sharing, there could certainly be situations where there will be sufficient geographic relocation to cause a prohibited major channel PSIP overlap. Mr. Symons indicated that because channel sharing is voluntary, this problem could be addressed by simply warning potential channel sharers in advance that they might lose major channel PSIP protection if their relocation results in a prohibited overlap.

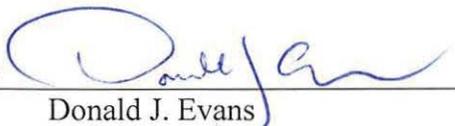
We also raised the matter of the 105 stations that currently have overlapping identical two-part major/minor channel combinations which violate the directives of Annex B. (See Attachment A) Mr. Lake and Mr. Colombo indicated that the Bureau's policy is not to concern itself with such prohibited overlap situations unless someone complains, and then the solution is to make the later entrant take a new major channel PSIP. Neither Mr. Lake nor Mr. Colombo explained why the Bureau's apparent unwritten policy ignores the dictates of Annex B, which is incorporated into the Commission's rules by reference in Section 73.682(d). The overlap of two stations' signals does not alter the major channel of either.

Except for the limited and well-defined circumstances contemplated by Paragraph 4, Annex B does not permit, much less require, a later entering station to be assigned a different major channel from those otherwise specified in Annex B. Neither does the chronological order in which those stations commence service. Major channel designations are dictated by the Preamble and Paragraphs B.1.1(1)-(5) of Annex B. When two stations otherwise entitled to the same major channel number have overlapping signals, they are to partition their respective minor channel numbers to avoid use of identical two-part channel numbers. In no case is assignment of a new major channel not prescribed by Annex B permitted. We did not suggest at the time, but suggest here, that going forward the Commission should not and may not rely on a major channel PSIP number assignment policy which is plainly contrary to the Commission's own rules.

Moreover, for purposes of the re-packing process, it would make no sense legally or practically to involuntarily mandate major channel PSIP number assignments which are known to be in conflict with the Commission's PSIP channel assignment rules, and then apply an unlawful remedy if someone complains. That would compound the initial violation with a second violation. If this were an appropriate regulatory approach, the Commission could just as easily assign frequencies without any regard to what its rules require and then wait to see if anybody complains. The Commission, as much as its regulatees, must obey its own rules. It can't adopt channel assignment policies that are inconsistent with those rules. The Incentive Auction assignment process must therefore take into account both the current policy prohibiting overlap of major channel PSIP numbers and the major channel assignment rules of ATSC A/65 in connection with its assignment of channels under the re-packing procedures.

Respectfully submitted,

PMCM TV, LLC

By: 
Donald J. Evans
Its Attorney

cc (via email): Howard Symons
Dorann Bunkin
William Lake
Mark Colombo
Julissa Marenko
Mary Margaret Jackson