

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Request for Declaratory Ruling by)	
Meredith Corporation And “Alternative)	MB Docket No. 14-150
PSIP Proposal” By PMCM TV, LLC for)	
WJLP (Formerly KVNV(TV)),)	
Middletown Township, New Jersey)	

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

Viacom Inc. (“Viacom”), pursuant to Section 1.115(f) of the Commission’s Rules (47 U.S.C. § 1.115(f)), hereby submits this Reply to the Opposition to Application for Review filed in the above-referenced proceeding by PMCM TV, LLC, licensee of television station WJLP, Middletown Township, New Jersey (“PMCM,” with said Opposition hereinafter the “PMCM Opposition”).¹

PMCM appears to misunderstand the relief Viacom has requested in its Application for Review (the “Viacom AFR”).² Viacom did *not* challenge the substance of the Media Bureau’s *Declaratory Ruling* in the above-captioned proceeding, in which the Bureau ordered PMCM to operate WJLP on virtual channel 33, not virtual channel 3.10 as PMCM had requested.³ Nor did Viacom challenge the substance of the Bureau’s separate but simultaneous letter to Cablevision

¹ PMCM TV’s Opposition to Application for Review, MB Docket No. 14-150 (filed July 21, 2015) (“PMCM Opposition”).

² Viacom Inc. Application for Review, MB Docket No. 14-150 (filed July 6, 2015) (“Viacom AFR”).

³ *Request for Declaratory Ruling by Meredith Corporation and “Alternative PSIP Proposal” by PMCM TV, LLC for WJLP (Formerly KVNV(TV)), Middletown Township, New Jersey*, MB Docket No. 14-150, Declaratory Ruling (DA 15-662, rel. June 5, 2015, MB) (“*Declaratory Ruling*”).

Systems Corporation (“Cablevision”), Time Warner Cable Inc. and Comcast Cable Communications, LLC (the “June 5 MVPD Letter”), in which the Bureau established the procedures and deadlines that will govern WJLP’s cable carriage rights in the wake of the *Declaratory Ruling*.⁴ Nor has Viacom asked the Commission to “delay resolution of cable carriage issues indefinitely.”⁵

Rather, Viacom only asked the Commission to clarify a matter not specifically addressed in the *Declaratory Ruling* or in the June 5 MVPD Letter, but that is of direct and immediate concern to Viacom, *i.e.*, that Cablevision may continue carrying Viacom’s Nickelodeon programming service on cable channel 33 unless (1) WJLP timely elected to be carried on cable channel 33 per the schedule established in the June 5 MVPD Letter and (2) the Commission’s resolution of PMCM’s parallel litigation over WJLP’s alleged right to be carried on cable channel 3 under the Commission’s channel positioning rules is no longer subject to

⁴ Letter from William T. Lake, Chief, Media Bureau, Federal Communications Commission, to Tara M. Corvo, Esq. *et al.*, FCC File No. BPCDT-20130528AJP, Facility ID No. 86537 (June 5, 2015) (“June 5 MVPD Letter”).

⁵ PMCM Opposition at 6.

reconsideration, review or appeal.⁶ Viacom was well within its rights to request such a clarification, and in fact the Commission handles such requests on a relatively routine basis.⁷

Fortunately, events since the filing of the Viacom AFR have made it easier for the Commission to issue a clarification. The June 5 MVPD letter gave PMCM two options for perfecting WJLP's carriage rights on the subject cable systems: (1) continue to prosecute its prior election that WJLP be carried on cable channel 3; or (2) elect that WJLP be carried on cable channel 33, but do so by July 6, 2015.⁸ According to WJLP's online public inspection file, PMCM did not elect carriage on cable channel 33 or any other channel by July 6, and thus apparently has chosen to continue prosecuting its prior election of carriage on cable channel 3.

⁶ See Viacom AFR at 2-4. PMCM challenges the Viacom AFR on procedural grounds, citing Sections 1.115(a) and (c) of the Commission's Rules. See PMCM Opposition at 2-4. Viacom does not agree with PMCM's reading of the circumstances surrounding the Viacom AFR, nor does it agree that the Viacom AFR is barred by the cited rules. In any event, Viacom explicitly requested that in the alternative the Commission consider the Viacom AFR as a petition for clarification, and PMCM has not objected to that request. See Viacom AFR at 2 n. 4 (“[G]iven the potential unnecessary harm to Nickelodeon and its viewers, and the need to ensure that all affected parties are sufficiently protected, Viacom submits that public interest factors warrant consideration of this Application for Review. Should, however, the Commission determine otherwise, Viacom requests that this filing be treated as a petition for clarification of the *Declaratory Ruling*.”)

⁷ See, e.g., *Mr. William J. Carter*, Opinion, 30 FCC Rcd 2002 (PSHSB 2015); *TiVo Inc.'s Request for Clarification and Waiver of the Audiovisual Output Requirement of Section 76.640(b)(4)(iii)*, Memorandum Opinion and Order, 27 FCC Rcd 14875 (MB 2012); *Pacific Telecom Cable, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 4454 (1989). PMCM further contends that the Viacom AFR is “defective” because the Bureau stated that it was not addressing channel positioning issues in the *Declaratory Ruling*. PMCM Opposition at 5-6. The fact remains, however, that the *Declaratory Ruling* is inextricably linked to PMCM's channel positioning rights, since must-carry stations have the right to elect carriage on their virtual channel. *Carriage of Digital Television Broadcast Signal: Amendment to Part 76 of the Commission's Rules*, Declaratory Order, 23 FCC Rcd 14254, 14258 (2008). Viacom thus sought review of the *Declaratory Ruling* simply to ensure that its procedural rights would be fully protected.

⁸ June 5 MVPD Letter at 1-2.

Under the terms of the June 5 MVPD Letter, PMCM may file a cable carriage complaint under Section 76.61 of the Commission's Rules if any of the subject cable systems fail to carry WJLP on cable channel 3 by September 3, 2015.⁹

It is well settled that a must-carry station must live with the consequences of its carriage election, and cannot change that election after the fact.¹⁰ Here, PMCM has elected that WJLP be carried on cable channel 3, not cable channel 33. Cablevision's rights as to carriage of WJLP thus are clear: by September 3, 2015, Cablevision may either carry WJLP on cable channel 3 per PMCM's prior election or decline to do so subject to any cable carriage complaint PMCM may file as a result. Should Cablevision choose the latter option and carry WJLP on a different channel, it would be under no obligation to carry WJLP on cable channel 33, since PMCM did not elect that WJLP be carried there.¹¹

While Viacom believes that the above is self-evident from the Commission's Rules and relevant case precedent, a Commission clarification to that effect (whether in this docket or with respect to the June 5 MVPD Letter) would conclusively eliminate the possibility that Nickelodeon will be unnecessarily displaced from channel 33 on all of Cablevision's cable systems in the New York, NY DMA, with a consequent risk of service disruption and confusion for roughly 2.5 million cable subscribers. Further, such a clarification would fully protect the

⁹ *Id.*

¹⁰ See, e.g., *Radio Perry, Inc. (WPGA-TV, Perry, Georgia) v. Cox Communications, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 16392, 16395 (MB 2011) ("The Commission's rules do not contemplate changing or disaffirming an election once made, and as the Cable Services Bureau has said in the past, to permit stations to change a valid election would 'lead to administrative chaos.'") (footnotes omitted)

¹¹ See, e.g., *Complaint of Paxson Los Angeles License, Inc. against West Valley Cablevision Industries, Inc., d/b/a Time Warner Communications*, Opinion, 14 FCC Rcd 7070, 7074 (CSB 1999).

legitimate interests of *all* affected parties, without effectively allowing PMCM to hold Nickelodeon's channel position in limbo while it litigates over carriage of WJLP on cable channel 3.

WHEREFORE, for the reasons set forth above, Viacom Inc. requests that the Commission clarify that Cablevision is not obligated to carry WJLP on cable channel 33 under the June 5 MVPD Letter, the *Declaratory Ruling* or the Commission's Rules, given the facts and circumstances set forth above.¹²

Respectfully submitted,

VIACOM INC.

By: /s/ Keith R. Murphy
Keith R. Murphy
Senior Vice President, Government
Relations and Regulatory Counsel
1501 M Street, NW Suite 1100
Washington, DC 20005

August 3, 2015

¹² The Commission should further clarify that PMCM has forfeited any right to carriage on cable channel 33 until the next must-carry election period, and may exercise such right for said period only if the Commission's resolution of PMCM's pending litigation over carriage on cable channel 3 is no longer subject to reconsideration, review or appeal. *See* Viacom AFR at 4 n.7.

CERTIFICATE OF SERVICE

I, Karla Huffstickler, hereby certify that a copy of the foregoing Reply to PMCM TV, LLC's Opposition to Application for Review was served on August 3, 2015, by first class mail unless otherwise noted, to the following:

Michael D. Basile
John S. Logan
Cooley LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004

John W. Bagwell
CBS Broadcasting, Inc.
51 West 52nd Street
New York, NY 10019

Eve R. Pogoriler
Covington & Burling LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001-4956

Donald J. Evans, Esq.
Anne Goodwin Crump
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209

/s/ Karla Huffstickler
Karla Huffstickler