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August 12, 2015

BY EMAIL

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Room TW-B204
Washington, DC 20554

Re: *Notification of Presentation, Program and System Information Protocol (PSIP) Designation for Station WJLP(TV) (formerly KVNV(TV)), Middletown Township, NJ (FCC Facility ID No. 86537), MB Docket No. 14-150; Letter of William T. Lake, Chief, Media Bureau, Federal Communications Commission to Tara M. Corvo, Esq., et al., FCC File No. BPCDT-20130528AJP (June 5, 2015)*

Dear Ms. Dortch:

Pursuant to the Commission's ex parte regulations, 47 U.S.C. § 1.1208, Viacom, Inc. ("Viacom") hereby provides notification of its presentation in the above-referenced proceedings on August 10, 2015, to which all parties in the above-referenced proceedings were invited. Attending on behalf of Viacom were Keith R. Murphy, Senior Vice President, Government Relations and Regulatory Counsel for Viacom, and Rosemary C. Harold, Wilkinson Barker Knauer, LLP. Other attendees were Donald J. Evans, Fletcher Heald & Hildreth, PLC, counsel to PMCM TV LLC; Radhika Bhat, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., counsel to Cablevision and Time Warner Cable; Paul Swain, Covington & Burling LLP, counsel to ION Media Networks; John Logan, Cooley, LLP, counsel to Meredith Corporation; and John Bagwell, Vice President and Associate General Counsel for CBS Broadcasting, Inc. Frederick W. Giroux, Davis Wright Tremaine, LLP, counsel to Comcast, declined the invitation to attend. Attending from the FCC staff were Mary Beth Murphy, Chief of the Media Bureau's Policy Division; Steven Broeckaert, Senior Deputy Division Chief of the Media Bureau's Policy Division; Holly Saurer, Associate Chief of the Media Bureau; Joyce Bernstein of the Media Bureau; and Royce Sherlock of the Office of General Counsel.

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The purpose of Viacom's presentation was to seek FCC clarification that Cablevision is not obligated now, as a matter of law, to begin carrying PMCM's WJLP(TV) Middletown Township, NJ on cable channel 33 by virtue of either the Media Bureau's June 5, 2015 Declaratory Ruling in MB Docket No. 14-150 ("Declaratory Ruling") or the related letter of Media Bureau Chief William Lake on the same date ("June 5 Letter"). Such carriage would require displacing Viacom's Nickelodeon network from the Cablevision channel it has occupied for many years.

In support of its request, Viacom noted that PMCM continues to prosecute its rights to channel 3 as its virtual broadcast ("PSIP") channel and did not act by the deadline the FCC established in the June 5 Letter (by waiver on the FCC's own motion of 47 C.F.R. 74.64(f)(4)) – July 6, 2015 – to change its must-carry/channel-positioning election to channel 33. The Commission staff acknowledged that the deadline had passed without action by PMCM.¹ PMCM's counsel confirmed that it continues to stand by its channel 3 election request, which it submitted in 2014. PMCM's counsel also confirmed that its Application for Review of the Declaratory Ruling and related petition for writ of mandamus in the U.S. Court of Appeals for the District of Columbia Circuit remain pending.

In response to Viacom's questions concerning Cablevision's assertions to Viacom that the June 5 Letter imposes a legal obligation to carry WJLP's signal on cable channel 33, staff stated that it "did not know how Cablevision could take that position based on the June 5 Letter." FCC staff further stated that broadcast must-carry stations and MVPDs are free to negotiate channel positioning that differs from the station's must-carry election. PMCM's counsel confirmed that PMCM and Cablevision have not reached an agreement for carriage at channel 33.

Given these facts and the Commission's precedent concerning the channel-position election process, *see, e.g., Radio Perry, Inc. (WPGA-TV, Perry, GA) v. Cox Communications, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 16392 (MB 2011), Viacom maintains that Cablevision is not legally obligated to carry WJLP on channel 33 at this time. As Viacom discussed during the August 10th meeting, however, Cablevision will begin removing Nickelodeon from channel 33 on August 11th under the apparent mistaken belief that it has such a legal obligation. Viacom explained that this mistaken belief is clearly demonstrated by Cablevision's July 21st letter to the Media Bureau, contemporaneous statements to Viacom regarding its reading of the June 5 Letter, its notifications to subscribers that it will replace Nickelodeon with WJLP on August 11th, and the absence of any agreement between Cablevision

¹FCC staff also noted that the deadline established in the June 5 Letter for PMCM to file a carriage complaint with respect to its election for carriage on channel 3 – September 3, 2015 – has not yet passed and that as of August 10, 2015, the Commission has not received such a complaint.

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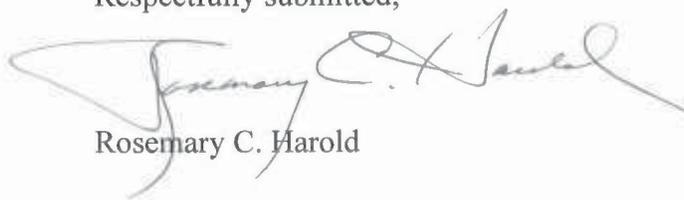
and PMCM for carriage of WJLP at channel 33. The disruption and harm to Nickelodeon and its viewers are unnecessary and unjustified. A Commission response to Viacom's request for clarification therefore would serve the public interest without jeopardizing the interests of any party in the pending administrative or appellate litigation.

Accordingly, Viacom requested issuance of a written clarification prior to September 3, 2015. For the avoidance of doubt, the clarification should minimally state:

- The June 5 Letter did not establish a legal obligation requiring Cablevision (or any other relevant MVPD) to carry WJLP on cable channel 33. The June 5 Letter simply set forth directives by which PMCM could have altered its channel-placement request to seek a channel other than channel 3 – which it did not do.
- Consequently, PMCM has forfeited any claim to carriage by legal right on cable channel 33 during the current election cycle, unless and until the pending litigation results in a final determination to the contrary.
- Because PMCM's rights to obtain channel 3 remain a matter of pending litigation, Cablevision could not be sanctioned for declining to carry WJLP on cable channel 33 during the current election cycle, absent finality in the above-referenced proceedings that results in an explicit FCC directive requiring such carriage.

Should any questions arise concerning this submission, kindly contact the undersigned.

Respectfully submitted,



Rosemary C. Harold

cc: Steven Broecker, MB
Mary Beth Murphy, MB
Holly Saurer, MB
Joyce Bernstein, MB
Royce Sherlock, OGC
Keith R. Murphy
Donald J. Evans
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