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February 19, 2016

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Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
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Room TW-A325
Washington, DC 20554

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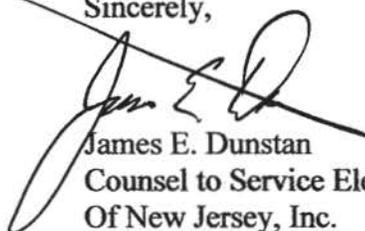
Re: PMCM TV, L.L.C. v. Service Electric Cable Television of
New Jersey, Inc.
File No. CSR-8918-M
Docket No. 16-26
Opposition to Carriage Complaint

Dear Ms. Dortch:

Attached please find an original and four (4) copies of Service Electric Cable Television of New Jersey, Inc.'s Opposition to Carriage Complaint. A copy of this pleading has been submitted electronically via ECFS in the above-referenced docket.

If there are any questions concerning this submission, please contact this office directly.

Sincerely,



James E. Dunstan
Counsel to Service Electric Cable Television
Of New Jersey, Inc.

Attachment

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Before The
Federal Communications Commission
Washington, D.C. 20554

In re)
)
PMCM TV, L.L.C.) File No. CSR – 8918-M
Licensee of Television Station WJLP(TV)) Docket No. 16-26
Middletown Township, New Jersey)
)
Must-Carry Complaint against Service)
Electric Cable Television of)
New Jersey, Inc.)

To: The Commission

OPPOSITION TO CARRIAGE COMPLAINT

Service Electric Cable Television of New Jersey, Inc. (“SECTV-NJ”), by its attorneys, and pursuant to Sections 76.61 and 76.7 of the FCC’s rules, 47 C.F.R. Sec. 76.61 & 76.7, hereby files this Opposition to the Must Carry Complaint of PMCM TV, L.L.C. (“PMCM”), filed on or about January 19, 2016.¹ In response to PMCM’s carriage complaint, SECTV-NJ submits:

I. BACKGROUND

Beware of unintended consequences. The history of WJLP is documented in Docket 14-150 and need not repeated in any depth here. Suffice it to say that the moving of a television station over 2,000 miles because of a loophole² left in a statute by Congress when it ordered the

¹ Oppositions to must carry complaints must be filed within twenty (20) days of public notice of the complaint at issue. See *1998 Biennial Regulatory Review: Part 76 – Cable Television Service Pleading and Complaint Rules*, 14 FCC Rcd 418 (1999). PMCM’s Complaint appeared on Public Notice on February 3, 2016 (Report No. 0438). This response is filed within twenty (20) days of February 3, 2016, and thus is timely.

² Section 331(a) requires that the FCC allocate a VHF station to each state, if technically feasible. In analog broadcasting VHF signals are highly preferable to UHF signals because of the distance the lower frequency signals could propagate. In digital television, however, the opposite is true. VHF stations tend to perform far worse than UHF channels. See *Advanced Television Systems, Sixth Report and Order*,

transition of all television stations to digital broadcasting in 2005³ is now wreaking havoc on television stations, cable systems and television viewers in the top media market in the country. This havoc was created by PMCM alone, which now wants the FCC to create/waive/ignore rules in order to give WJLP a preferred channel position on cable systems. The Commission has indulged PMCM long enough.

On June 4, 2014, PMCM wrote SECTV-NJ and elected must-carry for the then not yet constructed WJLP. A copy of that letter is attached hereto as Exhibit 1. According to the Complaint, PMCM sent an election letter on September 18, 2014 to SECTV-NJ, electing must-carry for the next triennial period beginning January 1, 2015. Although the letter itself indicates that it was sent via certified mail, return receipt requested, neither the Complaint nor the attached Declaration of Robert McAllen claims it was sent via certified mail as required by FCC rules.⁴ SECTV-NJ has no record of having received this letter.

On October 22, 2015, PMCM sent a carriage Demand Letter to SECTV-NJ,⁵ which SECTV-NJ timely responded to via counsel on November 18, 2015.⁶ The SECTV-NJ response letter pointed out a number of errors in the October 22, 2015, Demand Letter and requested a

FCC 97-115, released April 21, 1997, ¶82 (“[Digital] TV operations on the lower VHF channels 2-6 are subject to a number of technical penalties, including higher ambient noise levels due to leaky power lines, vehicle ignition systems, and other impulse noise sources and interference to and from FM radio service”). Unfortunately, Congress never got around to modifying or repealing Section 331, and PMCM used this loophole to force the FCC into allowing it to relocate an existing station from Ely, Nevada (thus depriving viewers of first local television service), to Middletown Township, New Jersey.

³ See Digital Television Transition and Public Safety Act of 2005, setting the conversion date to February 17, 2009, subsequently extended to June 12, 2009 by the DTV Delay Act.

⁴ See, 47 C.F.R. § 76.64(h). It is interesting to note that the McAllen Declaration states only that the October 22, 2015 letter was sent via certified mail and was received by SECTV-NJ on October 26, 2015. The return receipt for the October 22, 2015 letter is attached to Exhibit 1 to the Complaint. No such return receipt is attached to Exhibit 3 to the Complaint.

⁵ See Complaint, Exhibit 2.

⁶ See Complaint, Exhibit 3.

response by PMCM. Specifically, the November 18, 2015 response letter noted that the October 22, 2015 Demand Letter did not provide proper contact information as required under FCC Rules. The Response also requested a copy of the election letter referenced in the PMCM correspondence dated October 22, 2015. SECTV-NJ never received an election letter dated October 22, 2015. The SECTV-NJ response then requested clarification of the following statement made in the October 22, 2015, demand letter:

WJLP(DT) does not and will not share a broadcast network affiliation with, or substantially duplicate the signal from WJLP(DT), PMCM agrees, at its own cost, to ensure deliver[] of a good quality signal of WJLP(DT) through alternative means.

The SECTV-NJ response letter then pointed out that WJLP's channel positioning rights were unclear because of the ongoing PSIP battle at the FCC, and because of existing contracts, SECTV-NJ was not able to place WJLP on its system absent an FCC order clarifying those rights. Notwithstanding all of the errors in PMCM's election, SECTV-NJ indicated its desire to discuss a mutually acceptable channel position for carriage, and requested a response from PMCM. PMCM's response was to file the instant must-carry complaint at the full Commission level.

II. ARGUMENT

A. PMCM's Complaint is Improperly Filed

As noted above, PMCM filed the Complaint directly with the Commission, rather than with the Media Bureau. It is improperly filed and should be dismissed. Sections 0.61 and 0.283 make clear that the Media Bureau is delegated the authority to deal with must-carry complaints.⁷ It is the Media Bureau, not PMCM, which must decide whether a case "present[s] novel

⁷ 47 C.F.R. §§ 0.61 & 0.283.

questions of law, fact or policy that cannot be resolved under existing precedents and guidelines.”⁸ So once again, PMCM decides to rewrite the Commission’s rules for its own benefit.

The filing of the complaint directly at the Commission level denies SECTV-NJ its due process rights under the Commission’s rules by taking the initial decision away from the Bureau which has direct expertise in cable carriage matters, and appealing directly to the five Commissioners. Filing directly with the Commissioners also deprives SECTV-NJ of a right of appeal should the Media Bureau rule in PMCM’s favor. PMCM’s Complaint should be dismissed, or at the least, assigned to the Media Bureau for deliberation and action.

B. PMCM Has Never Perfected Must-Carry Rights on the SECTV-NJ System

PMCM’s Complaint should further be dismissed because it has never made a proper must-carry election. First, its June 4, 2014 election letter was not valid. FCC rules require new television stations to make an election no earlier than 60 days prior to commencing broadcasting and no later than 30 days after commencing broadcasting.⁹ WJLP commenced broadcasting on or about October 3, 2014.¹⁰ Its June 4, 2014, election letter was sent some 120 days prior to going on the air and is therefore beyond the window set forth in Section 76.64(f)(4).

As set demonstrated above, PMCM’s September 14, 2014, letter also failed to perfect any must-carry rights. SECTV-NJ never received such a letter, and nowhere in the Complaint or accompanying affidavit (other than on the face of the letter attached as Exhibit 3 of the Complaint) did PMCM state that the September 14, 2014 letter was sent certified mail and

⁸ 47 C.F.R. § 0.283(c). As demonstrated below, PMCM’s complaint fails to raise any novel questions of law or policy as there is ample precedent for the Media Bureau to render a decision in SECTV-NJ’s favor.

⁹ 47 C.F.R. § 76.64(f)(4).

¹⁰ See PMCM *ex parte* submission in Docket 14-150, dated February 2, 2016, p. 4.

actually received by SECTV-NJ. Under applicable precedent, PMCM's election letter did not perfect any must-carry rights.¹¹ Finally, PMCM's October 22, 2015, Demand Letter was so riddled with errors requiring correction and clarification that it cannot be seen as having created must-carry rights. It is the burden of television stations to demonstrate that they are entitled to carriage.¹² The Commission has recognized the difficulties MVPD's have in determining the validity of election and carriage requests, and thus require strict adherence to both the procedural and substantive rules.¹³ PMCM's Complaint should be dismissed on this basis.

C. PMCM Has No Rights to Carriage on Channel 3.

Finally, PMCM's demand to be carried on Channel 3 on the SECTV-NJ system must be rejected. Carriage of digital television stations is governed not by its over-the-air channel number, but rather by its PSIP.¹⁴ The Bureau has dismissed a number of channel positioning

¹¹ See *Gannon University Broadcasting, Inc.*, 10 FCC Rcd 8619 (CSB, 1995). "Given the large number of broadcasters and cable operators involved, the Commission has recognized the potential for confusion and dispute surrounding the initial must-carry/retransmission consent election. Thus the rules and process for making the election, including in particular the requirement that such notifications be sent by a date certain via certified mail, were specifically designed to provide certainty and avoid embroiling the Commission in disputes of this type." *Id.* See also *Family Stations, Inc. (KTFL) v. EchoStar*, 17 FCC Rcd 982 (CSB, 2002); *Family Stations, Inc. (WFME) v. EchoStar*, 17 FCC Rcd 987, ¶ 9 (CSB, 2002), *aff'd on recon.*, 17 FCC Rcd 8235 (CSB, 2002); *North Pacific International Television, Inc. (KHCV) v. EchoStar*, 17 FCC Rcd 919 (CSB, 2002); *Family Stations, Inc. (KFTL) v. DirecTV, Inc.*, 17 FCC Rcd 2365 (CSB, 2002); *Family Stations, Inc. (WFME) v. DirecTV, Inc.*, 17 FCC Rcd 2372 (CSB, 2002).

¹² Television stations have both the burden of pleading and the burden of proof in carriage cases. See, e.g., 47 C.F.R. § 76.66(m)(3) & § 76.7(a)(4) (television stations have burden of demonstrating prima facie case); *Christian Television Corporation (WCLF-TV)*, 17 FCC Rcd 1765, ¶ 13 (MB 2002) (once MVPD has rejected carriage based on good faith analysis, burden is on television station to demonstrate it has carriage rights).

¹³ See *In the Matter of Family Stations (WFME)*, 17 FCC Rcd 987, ¶ 9 (MB, 2002) ("EchoStar must contend with hundreds of election requests from local stations, and configuring its satellite systems requires some degree of certainty to enable it to fill its obligations," citing to *DBS Must Carry Order*, 16 FCC Rcd, ¶¶ 20-22).

¹⁴ *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, Declaratory Order*, 23 FCC Rcd 14254, 14258-59 (2008) (clarifying that reference to a station's PSIP is "the manner in which cable operators are to determine the channel number on which a local commercial or qualified NCE station is 'broadcast over the air'" for the purposes of implementing a must carry election). "In digital broadcasting, a broadcast station's channel number is no longer identified by

disputes in the digital television age, and in each has found that post-digital conversion, it is the PSIP, not the over-the-air channel number, that governs channel positioning rights.¹⁵ PMCM's argument that Section 614(h) of the Communications Act must be read literally to mean that television stations have carriage rights on their over-the-air RF channel would destroy nearly a decade of well-established policy and instantly plunge hundreds of television stations and thousands of cable systems into chaos as channel line-ups on virtually every cable system in the country would have to be changed. Moreover, a switch from PSIP to over-the-air would destroy the brands of many stations which operated as VHF stations in analog mode, but now operate in the UHF band, while maintaining a VHF PSIP. PMCM has unleashed enough carnage in the New York television market as is – giving WJLP the “essential”¹⁶ VHF cable channel it wants would set a precedent that could undermine the entire television/MVPD landscape for years. Television and cable viewers across the country should not be subject to such an upheaval just to please a single television station that is in a misery of its own making.¹⁷

reference to its over-the-air frequency” and that “any station carried pursuant to mandatory carriage may demand carriage on its major channel number as broadcast in the station’s PSIP.” *Id.*

¹⁵ See *KSQA, LLC v. Cox Cable Communications, Inc., Memorandum Opinion and Order*, 27 FCC Rcd 13185, 13186-87 (MB 2012) (a digital station’s channel positioning choice “may attach only to its Major Channel Number as carried in its PSIP”). See also *Gray Television Licensee, LLC v. Zito Media, L.P.*, 28 FCC Rcd 10780, n. 2010 (MB 2013) (“a station’s over-the-air broadcast channel number is no longer identified by reference to its over-the-air radio frequency, but instead to its Major Channel Number as carried in its PSIP”); *Carriage Letter*, 30 FCC Rcd at 6177, n. 6; *In re PMCM TV, LLC*, No 15-1058, Opposition of the Federal Communications Commission to Petition for Writ of Mandamus (D.C. Cir., filed June 19, 2015).

¹⁶ See PCMC *ex parte* filing in Docket 14-150, filed December 23, 2015.

¹⁷ This misery may be far from over, as PMCM has indicated to the FCC that if it is not awarded PSIP Channel 3, it will seek another VHF PSIP channel. *Id.* Thus, were the FCC to order SECTV-NJ to place WJLP on a particular channel now, that all could change if PMCM is successful in obtaining another VHF PSIP channel. In such a case, SECTV-NJ would then have to disrupt its channel line-up (and the viewership habits of its subscribers) to accommodate a new channel location between 2-13.

Having demanded a channel position to which it is not entitled, PMCM has forfeited its channel positioning rights, and SECTV-NJ is free to place WJLP on any channel it desires.¹⁸ Notwithstanding this unilateral right, SECTV-NJ reached out to PMCM to discuss the placement of WJLP on a logical channel, within the broadcast tier of the system. Rather than engage in such a discussion, PMCM filed the instant Complaint, demanding that the FCC rewrite its rules for PMCM's benefit and to the detriment of the rest of the country. The Complaint should be dismissed.

III. CONCLUSION

PMCM played one of the great "GOTCHA" games in FCC history in using a clearly obsolete statutory provision to bring a new VHF television station into New Jersey. While it was technically possible to squeeze a new Channel 3 station into the table of allotments, it should come as little surprise that the ripple effect of this gambit would upset the delicate balance that the FCC created in the digital transition. The FCC and its licensees have spent countless resources trying to clean up the mess created by PMCM as it attempts to rewrite FCC rules to maximize its own commercial interests. Now it wants the FCC to grant it channel positioning rights it is not entitled to and force cable systems to upset established channel line-ups to give PMCM a preferred channel, while overlooking PMCM's failure to follow FCC rules required to perfect must-carry rights. PMCM's petulance should not be rewarded. The Bureau should dismiss the Complaint.

¹⁸ See *Continental Cablevision of Sierra Valleys*, 10 FCC Rcd 958 (CSB 1995) (cable system can choose what channel to put station on when station fails to make a proper election). "[T]here is no specific nor implicit requirement that cable operators arrange their basic tier such that some sort of alleged economic equilibrium amongst broadcasters is attained. Inferring such a requirement would complicate channel positioning election beyond anything envisioned by Congress." *Id.*

WHEREFORE, for the reasons set forth in this Opposition, SECTV-TV requests that the Bureau immediately deny the Complaint filed by PMCM

Respectfully submitted,

**SERVICE ELLECTRIC CABLE
TV OF NEW JERSEY, INC.**

By: /James /E. Dunstan
James E. Dunstan
Its Attorneys
Mobius Legal Group
P.O. Box 6104
Springfield, VA 221250

February 19, 2016

DECLARATION

I, Robert H. Williams, Jr., hereby declare under penalty of perjury that:

1. I am General Counsel of Service Electric Cable Television of New Jersey, Inc. ("SECTV-NJ").
2. I am familiar with the facts and circumstances related to PMCM's attempts to gain carriage on the SECTV-NJ system serving Sparta and Sussex County, New Jersey.
3. I have read the foregoing Opposition to Must Carry Complaint by SECTV-NJ in CSR-8919-M, MB Docket No. 16-27. With respect to statements made therein, other than those of which official notice can be taken, the facts contained there are true and correct to the best of my personal knowledge, information, and belief.


Robert H. Williams, Jr.

Dated: February 12, 2016

Exhibit 1

June 6, 2014

Via Certified Mail, Return Receipt Requested

Service Electric Cable TV of New Jersey Inc.
320 Sparta Avenue
Sparta, NJ 07871

Re: Mandatory Carriage Election for KVNV, Middletown Township, NJ

Dear Sir or Madam:

Pursuant to Section 614 of the Communications Act of 1934, as amended, and Section 76.64(f)(4) of the rules of the Federal Communications Commission, this will inform you that Television Station KVNV, Middletown Township, New Jersey (the "Station") will commence operation as a new television station in the New York, New York DMA during the week of August 4, 2014.

PMCM TV, LLC, the licensee of the Station, hereby elects mandatory carriage of the Station's television signal pursuant to Section 76.56(b) on all cable systems operated by Cablevision Systems Corp. or its subsidiaries and affiliates serving the New York, New York DMA, including but not necessarily limited to, those set forth on Exhibit A hereto, for the election period ending December 31, 2014. The Station is licensed to Middletown Township, New Jersey, which is located in Monmouth County, New Jersey and is part of the New York, New York DMA. KVNV will be broadcasting from 4 Times Square in New York City serving the entire New York DMA. The Station therefore is entitled to elect mandatory carriage on your system(s) under the rules of the FCC. Pursuant to Section 76.57 of the FCC's rules.

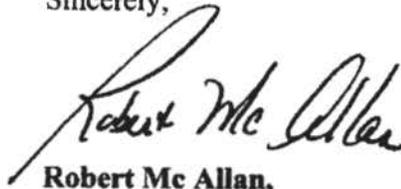
PMCM TV, LLC requests carriage of the Station on Channel 3, its over-the-air channel number. As KVNV will be broadcasting HD in 720p we are also respectfully requesting the station be simultaneously carried on the same corresponding number on the HD tier as is normally afforded other local broadcasters who have chosen on channel carriage.

The station's contact person and address for purposes of receiving official correspondence is as follows:

KVNV DTV 3 Middletown Township, NJ
1329 Campus Parkway
Neptune, NJ 07753
Attention: Lee Leddy
Office# (732) 403-3875
Email: lbleddy@gmail.com

Please contact the undersigned if you should have any questions concerning this matter.

Sincerely,

A handwritten signature in black ink that reads "Robert Mc Allan". The signature is written in a cursive style with a large, sweeping initial "R".

Robert Mc Allan,
Managing Member, PMCM TV LLC
Cell: (908) 433-0490
bob@RMcAllan.com

Cable Communities

Community Unit ID	Community Name	County	State
NJ0501	JEFFERSON	MORRIS	NJ
NJ0013	SUSSEX	SUSSEX	NJ
NJ0056	ANDOVER	SUSSEX	NJ
NJ0057	BYRAM	SUSSEX	NJ
NJ0058	FRANKLIN	SUSSEX	NJ
NJ0059	HAMBURG	SUSSEX	NJ
NJ0060	HARDYSTON	SUSSEX	NJ
NJ0061	NEWTON	SUSSEX	NJ
NJ0062	OGDENSBURG	SUSSEX	NJ
NJ0063	SPARTA	SUSSEX	NJ
NJ0064	VERNON	SUSSEX	NJ
NJ0087	STILLWATER	SUSSEX	NJ
NJ0088	ANDOVER	SUSSEX	NJ
NJ0089	FREDON	SUSSEX	NJ
NJ0110	WANTAGE	SUSSEX	NJ
NJ0336	HAMPTON	SUSSEX	NJ
NJ0337	LAFAYETTE	SUSSEX	NJ
NJ0453	FRANKFORD	SUSSEX	NJ
NJ0488	GREEN	SUSSEX	NJ
NJ0538	BRANCHVILLE	SUSSEX	NJ
NJ0540	SANDYSTON	SUSSEX	NJ
NJ0562	BLAIRSTOWN	WARREN	NJ
NJ0624	KNOWLTON	WARREN	NJ
NJ0625	HOPE	WARREN	NJ
NJ0626	HARDWICK	WARREN	NJ
NJ0627	FRELINGHUYSEN	WARREN	NJ

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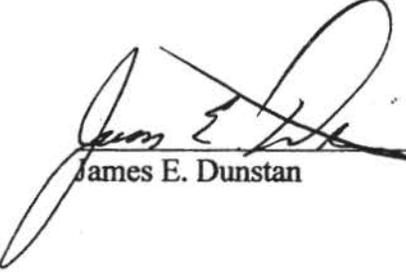
CERTIFICATE OF SERVICE

FCC Mailroom

I, James E. Dunstan, hereby certify that on this 19th day of February, 2016, copies of the foregoing "Opposition to Carriage Complaint" have been served by U.S. first-class mail, postage prepaid, upon the following:

Fletcher Heald and Hildreth 1300 17 th , N #1100 Arlington, VA 22209 Attn: Donald J. Evans, Harry F. Cole and Daniel A. Kirkpatrick	RCN Telecom Services, LLC 650 College Road East Princeton, NJ 08540 Attn: Ms. Deborah A. Rankin
Time Warner Cable Inc. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, PC 701 Pennsylvania Ave., NW Suite 900 Washington, DC 20004 Attn: Seth A. Davidson, Ari Z. Moskowitz	Cablevision Systems Corporation 1111 Stewart Ave. Bethpage, NY 11714 Attn: Mr. Tom Montemagno, EVP Programming
Verizon, Inc. 1300 I Street, NW Washington, DC 20005	Comcast Cable Communications, LLC One Comcast Center Philadelphia, PA 19103 Attn: Mr. Michael Nissenblatt
Advanced Broadband, L.P. 4636 Street Rd. Trevose, PA 19053	Blue Ridge Cable Technologies, Inc. 613 Third Street P.O. Box 215 Palmerton, PA 18071
Charter Communications Entertainment I LLC 12405 Powerscourt Dr. St. Louis, MO 63131	Hometown Online Inc. 47 Main Street Warwick, NJ 10990
Hovbilt Inc. Suite 12 Village Mall Freehold, NJ 07728	Service Electric Cable TV, Inc. 1045 Hamilton Street Allentown, PA 18101
Sky Satellite Corp. 258 Glen St. Glen Cove, NY 11542	DISH Network, LLC 9601 S. Meridian Blvd. Englewood, CO
DIRECTV, Inc. 2260 E. Imperial Hwy El Segundo, CA 90245	State of Connecticut Dept. of Energy and Environmental Protection Public Utilities Regulatory Authority Ten Franklin Square New Britain, CT 06051
New York State Department of Public Service Cable TV Franchise Authority 3 Empire State Plaza Albany, NJ 12223 Attn: Office of the Secretary	New Jersey Board of Public Utilities Office of Cable Television 44 S. Clinton Avenue P.O. Box 350 Trenton, NJ 08625

American Broadcasting Companies, Inc. 77 West 66 th St., 16 th Floor New York, NY 10023	CBS Broadcasting Inc. 2175 K Street, NW, Suite 350 Washington, DC 20037
NBC Telemundo License LLC 1299 Pennsylvania Ave, NW 19 th Floor Washington, DC 20004	Fox Television Stations Inc. 400 North Capital St. Suite 890 Washington, DC 20001
WPIX, LLC 220 East 42 nd St. New York, NY 10017	ION Media License Co., LLC 601 Clearwater Park Rd. West Palm Beach, FL 33401
Trinity Broadcasting Network of NY, Inc. 111 East 15 th St. New York, NY 10003	Univision New York, LLC 5999 Center Dr. Suite 4083 Los Angeles, CA 90045
CBS LITV, LLLC 1800 K. St., NW Suite 920 Washington, DC 20006	WRNN License Co., LLC 800 Westchester Ave., Suite S-640 Rye Brook, NY 10573
Mountain Broadcasting Corp. 99 Clinton Rd. West Caldwell, NJ 07006	WXTV License Partnership GP 5999 Center Dr., Suite 4083 Los Angeles, CA 90045
NRJ TV NY License Co., LLC 722 South Denton Tap Rd., Suite 130 Coppell, TX 75019	WNET 825 8 th Ave. New York, NY 10019



James E. Dunstan